



# **The Moral Problem of Slavery**

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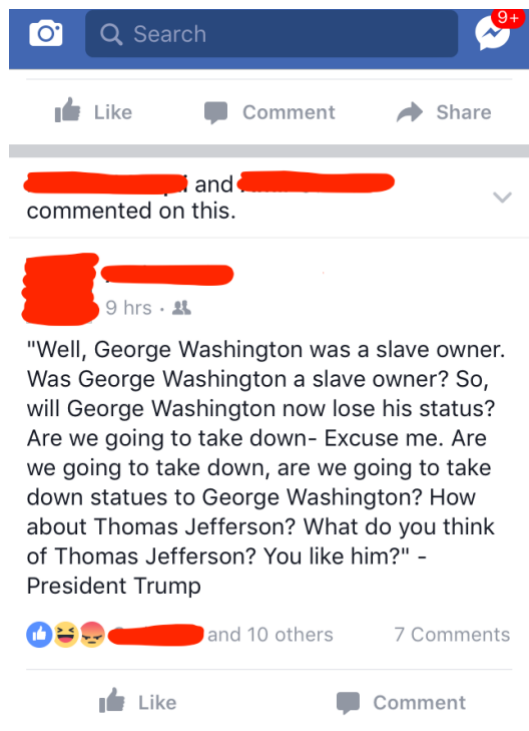
\* If you think this is too long, read the summary.

\*\* The fact that I'm a white man certainly complicates my writing about slavery. I wish someone else had written this essay. But I am also a Muslim man, and the moral problem of slavery concerns me as a Muslim. It is in this capacity that I write now. I have tried my best to place my own experiences in perspective. Regarding slavery in the Americas, as a person who has benefited from the expropriated land, lives, and labor of millions of Native Americans and Africans, it is my responsibility, and the responsibility of all others like me, to pay reparations to their descendants.

## Summary

There is near uniform agreement today that slavery is wrong. But that does not mean that everything we have labeled 'slavery' was always wrong in every time and every place. Confusion over this stems from two ambiguities: 1) use of the word 'slavery' to refer to a vast spectrum of dramatically different relationships involving labor and control; and 2) ambiguity over the word 'wrong,' which can mean things considered negative or harmful in *some* societies but not in others, but can also mean things that are wrong in *all* times and circumstances. Some forms of servile labor that we have called slavery are intrinsically, absolutely wrong, such as plantation slavery in the Americas. Other historical phenomena that we also refer to as 'slavery' were much less severe and were more akin to forms of wage labor than to dehumanizing exploitation. This is the category into which *riqq*, or servile labor as allowed in Islamic law, falls. *Riqq* should rightly, and beneficially, be condemned today for falling short of the ethical expectations of modern societies and the aims of the Shariah. But it cannot be accurately classified as an intrinsic, absolute wrong throughout space and time.

## The Moral Problem of Slavery



The above Facebook comment was made in August, 2017 by a thoughtful and observant young Muslim working in Washington, D.C. It quotes President Trump's comments on the conflict over the statue of Robert E. Lee in Charlottesville, Virginia. It does not do so approvingly. Indeed, this young Muslim is mocking the President's words with the contempt that so many in the U.S. feel towards Trump in particular and towards Conservatives in general. It is all the more ironic, then, that the President is making an important point. And it is precisely in that point—and in the liberal dismissal of it—that the heart of the slavery conundrum lies for all of us. For, with the proper adjustments, Trump's words would apply equally to the Prophet Muhammad ﷺ.

So, yes, I'm beginning this essay with a screenshot. It will feature a number of them. This is not a gimmick. This essay is about a gravely troubling subject, and sharing (anonymized) snapshots of our public and semi-public discussions is the

best way to show just how pervasive the cognitive dissonance surrounding the issue of slavery is in our society.

Discussing slavery is difficult. It's not just that the subject provokes strong emotional responses. As Trump's words and the Facebook comment above reveal, it also bends our minds into knots of ethical and communal contradiction. It does so because of the moral problem it presents. This is not the problem of whether slavery is wrong or not—that's been settled in the global public square by Muslims and non-Muslims alike. **The moral problem of slavery is the question of what kind of wrong slavery is. And, more importantly, it's a question of what the moral wrongness of slavery means for those who see their pasts as authoritative in some sense or another, and who look to those pasts for guidance.**

Some insist that discussing slavery is unnecessary. What they really mean by this is that the subject makes them uncomfortable. Yet, because the moral problem of slavery continues to rear its head, discussing it is very necessary. On August 15, as the protests and debates over what was happening in Charlottesville roiled the waters of American public life, Fox News' Tucker Carlson took up the topic in a way that (perhaps unintentionally) summed up its unreconciled tensions. He [explained](#), "Now, to be clear, as if it's necessary, slavery is evil. If you believe in the rights of the individual, it's actually hard to think of anything worse than slavery." But Carlson then reminded his audience that slavery had been the norm in human history until the 1800s. "Plato owned slaves," he explained, "so did Mohammed, peace be upon him." Slavery is evil, Carlson was saying. But he wanted to know if we were really going to topple all the figures of America's founding pantheon because of this. President Trump had [described](#) the predicament with a succinctness only he could muster: "George Washington was a slave owner... are we going to take down statues to (sic) George Washington?"





Nor was what happened in Charlottesville the only recent controversy to highlight the moral problem of slavery. Two months earlier, debate had swirled around the Atlantic Monthly [article](#), “My Family’s Slave,” written by the late Alex Tizon, a Pulitzer-winning, Filipino-American journalist. The article told the story of how Tizon’s Filipino family had a ‘slave’ (I’m putting the word in scare quotes here because, as will be clear, it is often precisely what we mean by slave that is at issue). She was known as Lola, and they had brought her to America with them, and she had served them for decades.

Response to the article was not surprising. Some, including many Filipinos, argued that the term ‘slavery’ was misleading in the article because it brought to mind American plantation slavery. This Filipino ‘slavery,’ they argued, was [not comparable](#) at all. Some argued that in the Filipino case, ‘slaves’ often became “part of the family.” Some even asserted that ‘slavery’ like that of Lola made economic and even moral sense in the [context of the Philippines’ poverty](#) and underdevelopment.

Other readers, by contrast, responded with [outrage](#) at what they saw as the casual treatment of, or apology for, a clear moral evil. They insisted that every member of the author’s family, as Lola’s masters, were guilty of a heinous crime. Some voiced further [outrage](#) at those defending the author, accusing them of being apologists for slavery and comparing their arguments to those used by defenders of slavery in the Antebellum South.

## No Squaring the Circle: The American/Islamic Slavery Conundrum

In Trump's remarks, Carlson's wordbox, and the outrage around the Atlantic article lies the crux of the issue. I term it the **Slavery Conundrum**. So far, we've been speaking of the American Slavery Conundrum, but the Islamic Slavery Conundrum is its sibling. The Slavery Conundrum is, quite simply, that people are trying to do the cognitively impossible—to affirm a triad of axioms that cannot all be held at the same time. Here I lay them out with some explanation.

**Axiom 1: Slavery is an intrinsic and gross moral evil.** As Tucker Carlson said, "it's actually hard to think of anything worse than slavery." Depriving people of their freedom, their relationships, and turning them into property to be exploited is unconscionable. It doesn't matter how you dress it up or what apologies you offer for it, slavery is just plain wrong. It was wrong two thousand years ago, and it's wrong today. This is not an intellectual point of debate. It's felt at a visceral level and with profound moral certainty.

**Axiom 2: Slavery is slavery.** There is a thing called 'slavery' (again, I use scare quotes because the term and concept itself are at issue), which can be located and labelled across history and geographical expanse. So we can talk about 'slavery in ancient Greece,' 'slavery in medieval China' and 'slavery in the American South' and be having one, unified ethical conversation. Scholars might argue either that there is not one, homogeneous phenomenon called 'slavery,' or that 'slavery' is so different from place to place and time to time that one really cannot talk about it as one phenomenon. But none of this matters. According to this axiom, slavery is slavery. Period.

**Axiom 3: Our Past has moral authority over us.** We belong to traditions and communities that draw moral guidance from figures and texts in our pasts, so our pasts both offer us inspiration and have some degree of moral or even legal claims on us. To some extent or another, figures in our past were better and wiser than we are, and we turn to them again and again for [guidance](#). We might hear

flaws or imperfections in these voices from the past, but they cannot be evil. Otherwise why would we heed them?

I refer to these three items as axioms because no mainstream voice in the American public square can challenge any of them without significant consequence. If you argue that American slavery [wasn't always that bad](#), you're considered a right-wing extremist. If you argue that slavery in other parts of the world was not or is not as severe as American slavery was, then, as reaction to the Tizon article shows, you're branded an apologist for slavery. Finally, the pantheon of our exemplars cannot be easily attacked. President Trump's mention of taking down statues of George Washington was a [reductio ad absurdum](#) argument: removing Washington from the nation's pantheon would be as politically unthinkable as it would be toponymically exhausting.

These axioms form a conundrum because they cannot each be denied, but neither can they all be true. If slavery (i.e., everything we call 'slavery' in the past or present) is an intrinsic and gross moral evil, then anyone who affirmed or practiced it is guilty of a grievous moral crime and is an unfit source of moral or legal guidance today.

The Slavery Conundrum was on full display in the wake of Charlottesville. Or, more properly, flimsy attempts to resolve its contradictions or at least gloss over them were on full display. President Trump could not resolve the contradiction. He could only point out the cost of its logical conclusion: if you condemn the moral authority of all those who allowed slavery, you lose the Founding Fathers (implied: that's not acceptable). Carlson and various other pundits tried to square the circle by fudging the first axiom and subtly minimizing the moral evil of slavery. On his show [Real Time](#), Bill Maher chided that the comparison of Washington and Lee was nonsense because, in the idiom of software, "For Washington slavery was a bug, for Lee it was a feature." [Vox's Matthew Yglesias](#) offered a slightly wordier version of the same argument: Slavery was only part of Washington's or Jefferson's legacy, while it was the entirety of someone like Lee's. [The Economist](#) used bait and switch. It argued that it was fallacious to compare Washington and Lee by turning the Civil War focus from slavery to the

South's secessionist aim: Washington and Jefferson had fought to found the Union, the author wrote, while Lee had taken up arms against it.

The problem, however, is that slavery can't be both an intrinsic and profound moral evil (as Carlson said, "It's hard to think of anything worse than slavery") and also just a "moral taint" (as he labelled it, just seconds later). If slavery is a profound moral wrong across space and time, then, it can't just be "a bug" or "part of someone's legacy." It would be a fatal bug, and it would obliterate their entire moral legacy and authority, especially if the figure in question was not just a philosopher or statesman **but a prophet or an embodiment of divine perfection**. Our modern public ethics in the West are rooted in the principles of equality, autonomy, and freedom. Slavery is a fundamental infringement on all three. How could a figure who viewed them with such contempt be part of a modern conversation about ethics, morality or justice? Think about it this way: In America today, would we allow a person who believed slavery was acceptable, or someone who owned slaves, to rise to a position of even medium moral, political, or communal authority? No, because we expect even children to know that slavery is evil. We won't watch movies made by an [anti-Semite](#), listen to jokes told by a [racist](#), or continue a hit TV program whose star sexually harassed minors. So we would certainly not follow the moral or religious guidance of someone who advocated or permitted slavery.

Except we all do. But more on that later. Before we proceed, it's important to recognize up front two major differences between the Islamic Slavery Conundrum and the American one. First, American slavery is inexorably bound up with the issue of race in America, both in the horrendous racial justifications used to defend American slavery and in the fundamental way that slavery shaped what race still means in America today. Slavery in Islamic civilization was often associated with race; e.g., military slaves were drawn mainly from Turkic populations, and the Ottomans culled their administrative slaves from Balkan youth. But race was never definitive for slavery across Islamic civilization, and it had no role in slavery as conceptualized by the tradition of Islamic law. The Prophet ﷺ had been clear: no race is superior to any other except by faith in



God.<sup>1</sup> Sadly, many Muslims in the past and still many today have forgotten this clear principle and conflate blackness and slavery. Although I will refer to race in the context of slavery in the West, racial bigotry has no place in the religion of Islam. And it is Islam in the sense of the high religious tradition that I will be engaging in this essay, not Islam as a popular religious practice or a world civilization. The racism that exists amongst Muslims is simply repugnant, and will not be addressed here.

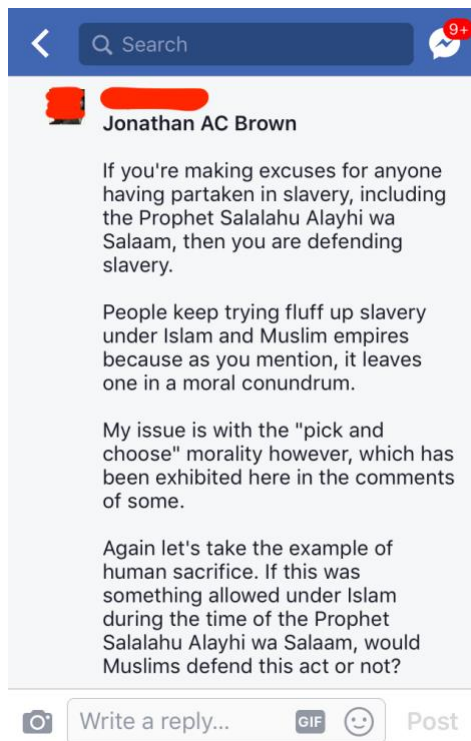
Second, the authority that we are dealing with in American history is that of the tradition of Enlightenment liberalism and its articulation by the Founding Fathers. It is ultimately human authority, and it is thus inevitably flawed. In the case of the Islamic tradition, the authority we're dealing with is—according to Muslims—that of God and His final prophet, Muhammad ﷺ. As we will discuss at length later on, this authority cannot sanction moral evil.

Now, let us examine each of the axioms in the American/Islamic Slavery Conundrum in the hopes of finding some way to resolve the moral problem it presents.

## Slavery Is Evil

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<sup>1</sup> *Musnad* of Aḥmad Ibn Ḥanbal (Maymaniyya printing): 5:411.



The above Facebook comment comes from a sincere and thoughtful young Muslim man, and it helps illustrate the first axiom—that slavery is an intrinsic and gross moral evil. The analogy that occurs to him is that of human sacrifice. It is totally indefensible in any place and at any time. As the leading historian of slavery in the West, David Brion Davis wrote, by the late 1700s, for many slavery had become “a symbol of the ultimate injustice.”<sup>2</sup>

It is easy to say such things about slavery, but what do such statements mean? Where does this kind of wrong fit on the spectrum of wrongs, and what are we saying about slavery when we describe it as a gross and intrinsic moral wrong?

The ‘gross’ aspect is simple. There are lots of things that we all acknowledge as wrong but still do anyway. This is often not because we are bad people or lack consciences. Rather, it’s because these wrongs are means to ends that are viewed as so good or necessary that the wrongs done are justified. So we might all agree that lying is wrong. But we usually allow white lies like telling someone we have other plans when we really just don’t want to go to their birthday party, because

<sup>2</sup> David B. Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*, revised ed. (New York: Oxford University Press, 1999), 549.

we value social cohesion and tranquility (as al-Ghazālī notes, “How many a lie is permitted for some common good”).<sup>3</sup> And sometimes we are faced with an inevitable choice between two wrongs, so we choose the less severe one.

A gross wrong, by contrast, is a wrong so weighty, severe, and reprehensible that it is never justified for any end. It’s always the choice you can’t make. So, in a [recent episode](#) of *Sherlock*, Dr. Watson refuses to execute a man to save the man’s wife from a psychopath even though the man wants him to do it. Because the act of killing an innocent person is considered a gross and profound wrong. Or, in the new classic *Battlestar Galactica*, Admiral Adama refuses to [commit genocide](#) against the Cylons even though this would safeguard all of humanity from likely destruction. Because genocide is a monstrous moral evil no matter what ends it secures.

What about the qualifier ‘intrinsic’? When it comes to understanding what ‘intrinsic’ means in discussions of morality, we have to remember that things can be wrong in two ways. To put it differently, the wrongness in things can be of two natures. Something can be wrong intrinsically, or *per se*, which means that its moral wrongness or evil is present in and of the thing itself, no matter when, where, or what the consequences are (this is sometimes referred to in ethics as a deontological wrong). We could argue that murder and genocide are intrinsically morally wrong, and many would argue that torture is intrinsically morally wrong too. Or things can be wrong by consequence; i.e., because of what they lead to (this is sometimes referred to as a teleological or consequentialist wrong). So depriving someone of food is wrong because it leads to their suffering and eventual starvation. But it could be right if the consequence being sought is good, like depriving a child of food for a time so that they can take medicine. (There are numerous ethical systems that come out of or rely on consequentialist thinking, such as utilitarianism and virtue ethics, none of which concern us here.)

There have generally been two main routes by which humans have arrived at the conclusion that something is intrinsically morally wrong. The first is by divine

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<sup>3</sup> *Rubb kadhīb mubāḥ li-maṣlaḥa*; Abū Ḥāmid al-Ghazālī, *The Fatāwā of al-Ghazzālī*, ed. Mustafa Mahmoud Abu-Sway (Kuala Lumpur: International Institute of Islamic Thought, 1996), 79.

command, such as when a prophet receives a command through revelation. So worshipping a god other than the one God, and committing adultery are both intrinsic wrongs established by God in the Bible and the Qur'an. For St. Augustine (d. 430), lying was intrinsically wrong because it placed one's soul in mortal jeopardy, and it was prohibited no matter what.<sup>4</sup>

The second route is via the use of reason, especially through what is known as natural law reasoning. This is a philosophical-legal tradition that holds that humans can use reason to arrive objectively at some understanding of a higher law that transcends custom and personal whim. Natural law reasoning has taken various forms. For some, like Plato (d. 347 BCE) and the Greco-Roman Stoic philosophers, it emerges from a belief that there is some divine reality beyond, behind, or within our world, and that our human reason can either connect with or reflect it. For others, like Ghazālī (d. 1111) and the Roman jurist Ulpian (d. circa 220 CE), it has come from the belief that we can use our reason to reflect on our nature as a species and come to conclusions about what is basically necessary, beneficial, or harmful for us. We can label these things good or bad at a basic level, if not at a moral one, then at least at a material one.<sup>5</sup>

This second register involves very low-level reasoning about human nature at a species level, concluding that what is good for humans is that which brings benefit and happiness, and what detracts from these is bad. Using it we might conclude that murder is wrong. We might observe that humans have an instinctive understanding that fairness and equity are right and that unfairness and inequity are wrong. Indeed, even [some monkeys](#) seem to know this. The first register of natural law reasoning, on the other hand, reaches to more abstract levels of what goods humans aspire to and what is required or prohibited for them to achieve those goods. Thus Stoic philosophers concluded that theft is wrong because all humans have an equal right to their own property.

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<sup>4</sup> Augustine, 'Lying (*De Mendacio*),' in *The Fathers of the Church* 16, trans. Sister Mary Sarah Muldowney (New York: Fathers of the Church, 1952), 67–70.

<sup>5</sup> Abū Ḥāmid al-Ghazālī, *Mi'yār al-'ilm* (Cairo: Maṭba'at al-'Arabiyya, n.d.), 122-3; Alan Watson, trans., "Book One," in *The Digest of Justinian, Volume 1*, 1-39 (Philadelphia: University of Pennsylvania Press, 1998), 2-3; Anver Emon, *Islamic Natural Law Theory* (Oxford: Oxford University Press, 2010), 114.

In our daily lives, however, most of the moral wrongs we encounter belong to the category of consequentialist wrongs. Indeed, much of what we deem right and wrong in our everyday interactions is right or wrong because it is the first link in a chain of consequences that we believe eventually lead to intrinsic wrongs, like those discussed above.

Many mundane moral wrongs have no intrinsic moral value. Shouting at someone is not an intrinsic moral wrong, since what constitutes shouting, harsh, or a rude tone in one society might be totally normal in another. Neither does driving on the left-hand side of the road in the U.S. have any inherent moral status. In these cases, what is wrong is acting in a way considered harmful or in violating agreed upon norms in a society. Violating customary morals might not be intrinsically wrong, but many instances of custom (what is customarily right or wrong) are instances of social contracts or understandings of equitable conduct in relationships. And one could certainly argue that violating agreements (even implied ones) or acting inequitably are intrinsic wrongs.

Moreover, committing customary wrongs like driving on the wrong side of the road very likely also leads to types of real harm, which itself could be an intrinsic wrong or at the very least be wrong in that it leads to the denial or reduction of an intrinsic good. Finally, driving on the left-hand side of the road in the U.S. is also illegal. While the law has no necessary overlap with intrinsic right (we all know of unjust laws), harming the rule of law and the social good it accomplishes would be an undesirable consequence. Plato gives us a paradigmatic example of this when he describes Socrates deciding not to accept help escaping his impending execution, itself an unjust ruling, because doing so would damage the rule of law so essential to harmonious life in his city.<sup>6</sup>

Sometimes the consequentialist reasoning that has led us to declare something morally wrong is so compelling that we treat that thing as effectively wrong in and of itself. So some conversations around intolerance and hatred see these two things as so guaranteed to lead to agreed-upon wrongs, such as violence or

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<sup>6</sup> Plato, *Crito*, 50a-b9. See also Alfonso Gómez-Lobo, *The Foundations of Socratic Ethics* (Cambridge: Hackett, 1994), 58-9.



baseless discrimination, that they should be combatted like intrinsic wrongs. When someone says “That's so intolerant,” we seldom require them to explain why such intolerance is seen as likely to lead to some undesirable end. It has effectively become an intrinsic wrong for many people in our society.

So far, we have been talking about how wrongness attaches to something. An equally important question concerns the nature of morality itself. Does it have its own, objective existence, or is it just a description we give to certain configurations of acts? Put differently, would morality exist if we weren't here to talk about it? For modern materialists—those who believe that the only existence is this physical world we see, feel, and observe around us—morality is a category we have come up with to rate our acts according to judgments we have developed either through custom or through reasoning about the harms we want to avoid and the goods we want to pursue. We can think of this as morality with a lowercase ‘m’. By contrast, for those who believe in divine command or the higher register of natural law reasoning, morality has a real existence on its own plane, like a reality parallel to our material world and reflected in it. It's the Good of Plato or the Reason of the Stoics. And it's the will of God, either as imbued in the actions done in His creation or sent down as divine commands and prohibitions.<sup>7</sup> All this we can think of as Morality with a capital ‘M’.

## The Intrinsic Wrongs of Slavery

So why is slavery seen to be an intrinsic moral wrong? This conclusion has mainly been reached through natural law reasoning (not divine command, awkwardly, see below) and on the basis of three related themes: 1) the fundamental equality of humans; 2) the fundamental right of freedom; 3) and the wrongness of treating humans as property.

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<sup>7</sup> The first is the moral objectivism of the Mu'tazila, the second is the divine command of the Ash'arī school of theology.

The intrinsic moral evil of slavery stems from the very fact of one or more of these states: ownership, domination, and/or unfreedom. But there is also an argument by consequence lying close by. Some argue that these three features are also consequentialist wrongs because they are steep and slippery slopes to unacceptable exploitation, suffering, and the deprivation of rights. In fact, they are such slippery slopes that they are *effectively* intrinsic wrongs by this fact alone. This we will have to examine later. For now, let's look at each intrinsic wrong of slavery in more depth.

### **Intrinsic Wrong #1: Slavery as Fundamental Inequality**

The earliest objections to slavery (even if they were muted and ignored) came from the notion that all humans were fundamentally equal and that slavery subverted this. The idea of human equality was located in the natural law reasoning of the Stoic school of philosophy in Classical Greece and Rome. Stoics held that the world was permeated by a Divine Fire, which was Reason itself (Greek, *orthos logos*; Latin, *recta ratio*), to which all nature conformed and to which our actions should conform if we want to be happy. As Cicero (d. 43 BCE) wrote, Stoics seek as much as possible to live according to nature.<sup>8</sup> Each human being has their equal share of this Divine Fire, so humans are all spiritually equal with the same basic duties towards one another.<sup>9</sup> The Stoic idea of all human beings as autonomous equals resurfaced in the seventeenth- and eighteenth-century revival of Stoic thought, as well as among skeptics like John Locke (d. 1704), who saw freedom and equality as part of the blank slate of basic human nature and also as God-given rights.<sup>10</sup>

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<sup>8</sup> Cicero was a follower of the Academic school, but he was both highly influenced by Stoicism and an influential articulator of its views; Cicero, *On Duties III* in *Selected Works*, trans. Michael Grant (London: Penguin, 1971), 163.

<sup>9</sup> David Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966), 77-81; A.T. Raymer, "Slavery – The Graeco-Roman Defense," *Greece & Rome* 10, n. 2 (1940): 17-21.

<sup>10</sup> See Duncan Kelly, *The Propriety of Liberty* (Princeton: Princeton University Press, 2011), 48-49.

## Intrinsic Wrong #2: Freedom vs. Domination

Out of the idea that all humans are equal comes the linked notion that all humans should be free to choose their actions and beliefs, at least to the extent allowed by law. Since Roman times, there has been a widespread belief in Western and Islamic thought that freedom is the default status of human beings. During the Enlightenment, thinkers like Locke, Montesquieu (d. 1755), and Rousseau (d. 1778) moved beyond the assertion that freedom was just man's natural state to the tenet that this was a fundamental right. It was infringed upon when one human being came to exercise unacceptable domination over another. Absolute domination is a wrong in and of itself, and it has also been understood as a sure path to exploitation.

## Intrinsic Wrong #3: Humans as Property

As one author summarizes, the principal moral wrong of slavery is that it involves "human beings owning other human beings as property."<sup>11</sup> The human-as-property notion is perhaps the most commonly decried feature associated with slavery. Indeed, it has been fundamental to definitions of slavery in both the Western and Islamic traditions (though not necessarily elsewhere) up to the present.<sup>12</sup> Aristotle (d. 322 BCE) acknowledged the profound ethical questions raised by one person holding another as property, because it involves one exploiting the other as if they were a tool.<sup>13</sup> By the time of the influential thinker Immanuel Kant (d. 1804), it was this fact of exploitation that stood out as the fundamental wrong. For Kant, humans are all ends in themselves, not just tools. One of his basic ethical premises is that no one should use anyone else solely as a means to an end. Being property is problematic because it seems to deny a

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<sup>11</sup> Naomi Zack, *The Ethics and Mores of Race* (Lanham, MD: Rowman & Littlefield, 2011), 84.

<sup>12</sup> The notion that the slave was property/chattel was a foundational feature of slavery in the Ancient Near East; Isaac Mendelsohn, *Slavery in the Ancient Near East* (New York: Oxford University Press, 1949), 34. For the early modern and modern periods, see Kevin Bales, *Understanding Global Slavery* (Berkeley: University of California Press, 2006), 46.

<sup>13</sup> Christopher Shields, *Aristotle* (London: Routledge, 2007), 369-71.

human being basic rights such as equality and autonomy. And it also suggests the real possibility of mistreatment and cruelty.

Like domination, in this sense the wrong of slavery-as-human-property is not just intrinsic. It might also be the case that one person being the property of another is so likely to lead to abuse, exploitation, and a deprivation of rights that slavery-as-human-property is actually a consequentialist wrong as well. But this consequence is so closely associated with the status of property that it's treated as an intrinsic wrong.

## Religions and Slavery

Note the absence of any reference to divine command as a source for the intrinsic moral wrongness of slavery. This is because, quite simply, all major religious traditions either permitted, condoned, or endorsed slavery. This was true through the eighteenth century for some, and well into the twentieth century for others.

We'll start from east to west. Regarding premodern Buddhism, to quote Jonathan Silk, "there is almost no indication in any premodern Buddhist source, scriptural or documentary, of opposition to, or reluctance to participate in, institutions of slavery."<sup>14</sup> In the case of Hinduism, it is hard to talk about slavery strictly within the parameters of religion because of how closely intertwined Indian religions are with the specific political, social, and economic history of India and also because, much more than in the Abrahamic tradition, Indian religious tradition was permeated with divinely-sanctioned, stratified social hierarchies of power (i.e., the caste system). Several complex systems of slavery were features of social and economic life in India from the Vedic period (circa 1500-500 BCE) onwards. In the first few centuries BCE and CE, in India slavery "was a fairly general institution in use among high and low alike."<sup>15</sup>

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<sup>14</sup> Jonathan A. Silk, "Slavery," in *The Encyclopedia of Buddhism*, ed. Robert E. Buswell (New York: Thomson Gale, 2004), 2:780-1.

<sup>15</sup> U.N. Ghoshal, "On a Recent Estimate of the Social and Political System of the Maurya Empire," *Annals of the Bhandarkar Oriental Research Institute* 40, no. 1 (1959): 68; idem, *Studies in Indian History and Culture* (Bombay: Orient Longmans, 1965), 327.

As Isaac Mendelsohn observed about the religions and philosophies of the ancient Near East, including the Old Testament, “nowhere in the vast religious literature of the Sumero-Akkadian world is a protest raised against the institution of slavery, nor is there anywhere an expression of the mildest sympathy for the victims of this system.”<sup>16</sup> Specifically in the Abrahamic tradition, the Old Testament allowed the Israelites to enslave non-Jews, and to take their women as concubines (Solomon had three hundred concubines, see 1 Kings 11).<sup>17</sup> Rabbinic law allowed concubinage up until the Talmudic period in the 4<sup>th</sup>-6<sup>th</sup> centuries CE (it seems to have vanished as a practice by the time Islam arose).<sup>18</sup> Jesus never condemned slavery in the New Testament and even assumed the master/slave relationship to be a reality of life in his [parables](#) (see Matthew 18:21-35). The apostles included slave owners (Luke 17:7-10). Paul instructed slaves to “[be submissive to their masters](#)” and to obey them “[as you would Christ](#).”<sup>19</sup>

Augustine and Isidore of Seville (d. 636) explained and justified slavery as the result of original sin or personal sin. They explained that God knew those who were truly guilty and referred to Paul’s teachings.<sup>20</sup> John Calvin (d. 1564) was supportive of ending slavery in Europe but not on any deeply moral grounds. He noted that the New Testament did not forbid or condemn it.<sup>21</sup> In the seventeenth century, when the Protestant Quakers began advocating for the abolition of slavery as a moral and spiritual evil they were the only sect to hold anything near that position.<sup>22</sup> At some points in medieval Europe, the Catholic Church was one

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<sup>16</sup> Mendelsohn, *Slavery in the Ancient Near East*, 123.

<sup>17</sup> See also Exodus 21; Leviticus 25; Deuteronomy 15:21.

<sup>18</sup> Louis Isaac Rabinowitz, “Concubine,” in *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik, 2<sup>nd</sup> ed. (Detroit: Macmillan Reference USA, 2007), 5:133-136; Majied Robinson, “Prosopographical Approaches to the Nasab Tradition: A Study of Marriage and Concubinage in the Tribe of Muḥammad, 500-750 CE,” (PhD dissertation, University of Edinburgh, 2013), 138-40.

<sup>19</sup> See Titus 2:9, Ephesians 6:5, and 1 Timothy 6:1. See also 1 Corinthians 7:20-24, Ephesians 6:5-9. It has been suggested that Paul urged obedience to the slave system because this was part of the “petty affairs of a dying world,” to quote Jennifer Glancy, and that he was sure the Kingdom of God was close at hand; see Jennifer A. Glancy, *Slavery as Moral Problem in the Early Church and Today* (Minneapolis: Fortress Press, 2011), 46.

<sup>20</sup> Pierre Bonnassie, *From Slavery to Feudalism in South-Western Europe* (Cambridge: Cambridge University Press, 1991), 26; Augustine, *City of God*, 19:xv.

<sup>21</sup> Henry Heller, “Bodin on Slavery and Primitive Accumulation,” *Sixteenth Century Journal* 25, n. 1 (1994): 55.

<sup>22</sup> David Davis, *Slavery and Human Progress* (Oxford: Oxford University Press, 1984), 107-8.



of the leading slave-owners.<sup>23</sup> Cardinal Avery Dulles [wrote](#) in 2005 that the Catholic Church had “never made an absolute condemnation of slavery as such...,” nor did Pope John Paul specifically assert that slavery was an “intrinsic evil,” as some have claimed (see [here](#) for different Catholic view). The Biblical approval of slavery endures to this day even at a popular level. Attending a Trump rally in Alabama, a [reporter](#) was asked, “Show me the place in the Bible where slavery is condemned!”

And, of course, slavery was not condemned by Islam’s scriptures. Though the Qur’an encourages the manumission of slaves and their good treatment, and the Prophet Muhammad ﷺ required Muslims to treat their slaves well, neither the holy book nor the Prophet’s ﷺ teachings condemned slavery *per se* or banned it.<sup>24</sup> The Prophet owned a total of fifteen male slaves, all of whom he eventually freed.<sup>25</sup> He also had two concubines, Māriya and Rayḥāna.<sup>26</sup> The first was a Coptic Christian from Egypt who was sent to the Prophet as a gift by the patriarch of Alexandria. Although Māriya was legally assured her freedom when she gave birth to the Prophet’s ﷺ child, premodern Muslim historians uniformly referred to her as the Prophet’s ﷺ concubine (*jāriya*), not his wife. There are conflicting reports on the status of Rayḥāna, who was originally from a Jewish tribe. Either the Prophet slept with her as his slave woman or freed her and married her. Both Māriya and Rayḥāna converted to Islam soon after coming into the Prophet’s ﷺ possession.<sup>27</sup>

### *Minimizing the Un-minimizable or Historicizing the Unhistoricizable*

<sup>23</sup> Bonnassie, *From Slavery to Feudalism in South-Western Europe*, 28.

<sup>24</sup> See, for example, *Ṣaḥīḥ Muslim: kitāb al-aymān, bāb iṭ‘ām al-mamlūk mim mā ya’kulu wa ilbāsihi mim mā yalbisu wa lā yukallifuhu mā yaghlibuhu*; *Ṣaḥīḥ Bukhārī: kitāb al-aymān, bāb al-ma’āṣī min amr al-Jāhiliyya*.

<sup>25</sup> Muḥammad Ibn Jarīr al-Ṭabarī, *Tārīkh al-Ṭabarī*, 6 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 2:216-18.

<sup>26</sup> The early *ḥadīth* transmitter Ma’mar b. Muthannā reported that the Prophet ﷺ had four concubines; Ibn Kathīr, *al-Bidāya wa’l-nihāya*, 15 vols. (Beirut: Maktabat al-Ma’ārif, 1990), 5:303-4.

<sup>27</sup> Ibn Kathīr, *al-Bidāya wa’l-nihāya*, 5:303-4; *Sunan* of Ibn Mājah: *kitāb al-‘itq, bāb ummahāt al-awlād*; Aysha Hidayatullah, “Māriyya the Copt: gender, sex and heritage in the legacy of Muhammad’s *umm walad*,” *Islam and Christian-Muslim Relations* 21, n. 3 (2010): 226.

The fact that slavery is held to be a gross, intrinsic wrong in Western public discourse is clear in the dissonance permeating modern historians' writings on the topic. In general, historians often criticize what they refer to as anachronistic judgments, or judging the people of one age by the standards of another. They argue that this privileges the present (a notion called presentism) and prevents real understanding of why people in the past acted the way they did.<sup>28</sup> In general, we in the West have abided well by this guideline.<sup>29</sup> Even American Christians devoted to combating the evils of Mormon polygamy did not dare censure Solomon for his hundreds of wives. Times were different then, we are told. Wagner's (d. 1883) Ring cycle still plays in Western opera houses despite [his antisemitism](#). Music and racial views are not necessarily related, it's said (or [are they?](#)). American law school professors continue to lavish praise on the superb legal mind and lucid writing of Justice Oliver Wendell Holmes (d. 1932). Indeed, we name elementary schools after him. All this despite the fact that he was a eugenicist who wrote, in a Supreme Court decision ruling in support of forced sterilization of "mental defectives," that "[three generations of imbeciles are enough](#)."

Yet slavery proves a rare exception to this rule against anachronistic judgment, a fact that forms a major part of the American/Islamic Slavery Conundrum. Even when writing about times in which slavery was widespread and considered unremarkable or about thinkers for whom the naturalness of slavery was obvious, modern historians often feel the need to make their objection to the institution known. One scholar of Aristotle speaks of the "justifiable outrage" we feel at the Philosopher's discussion of those who are 'natural slaves.'<sup>30</sup> Another, writing

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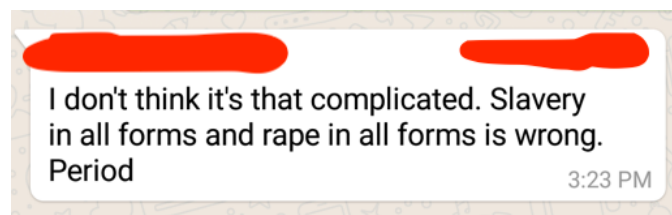
<sup>28</sup> David B. Davis warns that "we must avoid the retrospective indignation that can only serve to congratulate the present world while obscuring our understanding of the past."; Davis, *Slavery and Human Progress*, 122. R. Stephen Humphreys writes that "It is natural but misleading to identify one moment as normative and to judge all other periods against that one."; R. Stephen Humphreys, "Egypt in the World System of the Later Middle Ages," in *Cambridge History of Egypt* Vol 1, ed. Carl F. Petry (Cambridge: Cambridge University Press, 1998), 445.

<sup>29</sup> For example, on the issue of physical violence in disciplining children, see Glancy, *Slavery as Moral Problem*, 57, 84; Madeline C. Zilfi, *Women and Slavery in the Late Ottoman Empire* (Cambridge: Cambridge University Press, 2010), 116; T.R. Hobbs, *A Time for War: A Study of Warfare in the Old Testament* (Wilmington: Michael Glazier, 1989), 17, 211 (on explaining how the Old Testament could order the slaughter of babies in Joshua 6:21).

<sup>30</sup> Shields, *Aristotle*, 369. Alasdair MacIntyre calls Aristotle's defense of slavery "indefensible"; Alasdair MacIntyre, *After Virtue*, 3<sup>rd</sup> ed. (Notre Dame, IN: University of Notre Dame Press, 2007), 162.

about slavery in the Ottoman Empire, makes it clear that arguments minimizing the suffering slavery caused are “insupportable.”<sup>31</sup> In fact, even in a casual conversation, suggesting that we not judge the past by present standards or judge some cultures by the standards of others will usually lead to an accusation of moral relativism, an accusation then hammered home with the irrefutable nail of “Well, then would slavery be ok?” No one can rebut that argument, since everyone knows that slavery is slavery, and slavery is objectively wrong, throughout time and space.<sup>32</sup>

## Slavery is Slavery: The Problem of Labelling ‘Slavery’ with One Moral Judgment



The above message was sent to a discussion group of young Muslim professionals in California in February, 2017, in the wake of public debate within the Muslim community on slavery. It sums up most concisely the second axiom of the Slavery Conundrum. This axiom was also on display in the commotion surrounding the Tizon article, “My Family’s Slave.” When some people defended the author and his family by explaining that ‘slavery in the Philippines is not like slavery in the Americas; slaves in the Philippines are like part of the family,’ they were savaged for defending slavery. Implicit in the minds of their critics was that there is one consistent, operative definition of slavery and that, per axiom one, it’s a gross and intrinsic moral wrong.

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<sup>31</sup> Zilfi, *Women and Slavery in the Late Ottoman Empire*, 97. For other examples, see Glancy, *Slavery as Moral Problem*, 8.

<sup>32</sup> See [here](#) for how often [slavery](#) is used as an example in discussions of moral relativism.

It took a professor of Southeast Asian history from the University of Washington to weigh in on the Tizon controversy and bring it down from the plane of rhetoric to empirical reality. Vicente Rafael [wrote](#) the obvious: “‘slavery’ is not the same everywhere at all times.” This is so well established in scholarship on slavery that when I [wrote](#) that “ownership, freedom and exploitation come in shades of gray” and that forced labor and involuntary servitude exist on a spectrum, one scholar of Indian Ocean slavery commented that this was “an absolutely uncontroversial statement”; in fact, it was “really a quite banal one.”<sup>33</sup>

Certainly, we must be cautious about what uses are made of the distinctions drawn within the broader category of ‘slavery.’ Many defenders of the harsh and brutal slavery in the colonial Americas argued that the slavery they were supporting was benevolent.<sup>34</sup> Skepticism is well warranted.

But the problem that the axiom ‘Slavery is slavery’ presents for any kind of detailed moral thinking on ‘slavery’ is clear: if we insist that ‘slavery is slavery’ and label all slavery as a gross and intrinsic moral wrong, then we are applying the same level of moral condemnation to an institution that included both some of history’s wealthiest and most powerful individuals (like the Ottoman grand viziers, who were technically slaves) as well as history’s most desperate and oppressed. This is very crude moral reasoning, which only works if one views the category of ‘slavery’ itself as the complete locus of moral evil. As we’ll show below, this does not work well.

But why is public discourse on slavery at such odds with scholarship on the topic? In great part, it results from the enduring problems afflicting the very effort to define what ‘slavery’ is. As I set forth [previously](#), whether activists, historians or social scientists, scholars have been hard pressed to come up with a definition of slavery that fits everything we are used to calling slavery but does not include

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<sup>33</sup> Nathaniel Mathews, “Slavery, Abolition and the Moral Horizon of the Prophet Muhammad: A Response to Jonathan Brown,” unpublished paper, available on [academia.edu](https://www.academia.edu).

<sup>34</sup> Indrani Chatterjee, “Abolition by denial: The South Asian Example,” in *Abolition and its Aftermath in Indian Ocean Africa and Asia*, ed. Gwyn Campbell (London: Routledge, 2005), 151.

things we're not accustomed to placing under that label.<sup>35</sup> The most well received definitions have centered on the themes of freedom (and its inverse, domination), ownership (and thus exploitation), and the controlling threat of violence. One of the reasons that 'slavery is slavery' is such a dominant idea is that these three themes are often construed as binaries. Either you're free or you're not; either you're property or you're not. As a result, slavery is (inaccurately) construed in the public mind as the binary opposite of freedom, homogeneous and monochrome. As we'll see, this is very much not the case.

## Slaves as the Unfree

The notion of slavery as depriving someone of freedom, rooted in the Roman legal tradition, has been perhaps the most influential in both Western and Islamic civilization. As Justinian's (d. 565) influential codification of Roman law explained, a free person exists in that natural state "enjoyed by each one to do as he pleases, unless prevented by force or by law." A slave, by contrast, is a person "subjected to the authority of another, contrary to nature."<sup>36</sup> (It's important to note that by 'contrary to nature' Roman jurists did not mean morally wrong, just not the default state of affairs. Slavery was morally acceptable for them because it was affirmed by the *ius gentium*, the law of nations, which the influential jurist Gaius called "that law which natural reason has established among all human beings" — i.e., natural law).<sup>37</sup>

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<sup>35</sup> For a useful commentary on this, see Peter Kolchin, "Review Essay: Putting New World Slavery in Perspective," *Slavery & Abolition* 28, n. 2 (2007): 279.

<sup>36</sup> "*Et libertas quidem est, ex qua etiam liberi vocantur, naturalis facultas eius quod cuique facere libet, nisi si quid aut vi aut iure prohibetur. Servitus autem est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.*" *Institutes*, Book I, Title III. See [here](http://www.constitution.org/sps/sps02_j1-1.htm) for Latin text. On the nature of natural law and the law of nations, the *Institutes* adds, "For wars have arisen, and captivity and slavery, which are contrary to natural law, have followed as a result, as, according to Natural Law, all men were originally born free; and from this law nearly all contracts, such as purchase, sale, hire, partnership, deposit, loan, and innumerable others have been derived." [http://www.constitution.org/sps/sps02\\_j1-1.htm](http://www.constitution.org/sps/sps02_j1-1.htm) Book I, Title II.

<sup>37</sup> See Alan Watson, trans., "Book One," in *The Digest of Justinian, Volume 1, 1-39* (Philadelphia: University of Pennsylvania Press, 1998), 2-3. Irene Schneider writes, "The Roman jurists, too, did not develop a systematic (sic) of natural law (*ius naturale*) but used the term *ius naturale* in different contexts with different meanings. As a consequence, the institution of slavery on the one hand and the status of freedom of every man on the other hand were both seen (sic) founded in the *ius naturale*." Schneider sees this as a useful comparison to the internal tensions in the Islamic tradition; Schneider, "Freedom and Slavery in Early Islamic Time [sic] (1<sup>st</sup>/7<sup>th</sup>- 2<sup>nd</sup>/8<sup>th</sup>



In the formative period of the Islamic legal tradition, slavery was not actually defined.<sup>38</sup> It was just assumed that everyone understood the nature of this status, which was an undeniable reality of economic and social life the Late Antique Near East. In the Qur'an, the dichotomy of master (*rabb*) and slave (*'abd*) is fundamental to the revelation's articulation of the relationship between God and man. Within human society the distinction was replicated in the dichotomous hierarchy of 'free' (*ḥurr*) and slave (*'abd, raqīq*). The two terms defined each other through their differences, with free basically meaning 'not slave' and slave meaning 'not free.'<sup>39</sup>

This binary is deceptive, however. Although slavery here is defined in contrast to freedom, the two are not opposites at all. This results in a tension summed up beautifully by David Graeber: slaves are people whose freedom to act is limited by other people, i.e., their owners. But within what their owner allows, a slave can do whatever they want. So a slave is free to do whatever they want except what they are not allowed to do. But that is the same as the definition of a free person, whose freedom to act is also limited, in this case by the law. Within the law, they can do what they want. So, freedom and slavery are not dichotomous, they are just two degrees of unfreedom. Slavery is not the opposite of freedom. It's just a more extreme degree of restriction as defined within a specific social and legal system. In the formalized legal theory of post-eleventh-century Islamic law, the status of slavery was not defined in reference to any abstract notions like freedom but as an amalgamation of the specific restrictions that the Shariah

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Centuries)," *Al-Qanṭara* 28, n. 2 (2007):380-81; Stefan Knoch, *Sklavenfürsorge im Römischen Reich* (Hildesheim: Georg Olms Verlag, 2005), 35. Pointing out the ambiguity of the term 'natural' in relation to right and wrong in the Roman context, Robert Cover remarked, "The law of nature was not meant to be a mandate for Spartacus."; Robert M. Cover, *Justice Accused* (New Haven: Yale University Press, 1975), 10.

<sup>38</sup> I have asked Kecia Ali and Jonathan Brockopp as well, and neither of them know of definitions for slavery (*riqq*) in the first three centuries of Islam. Franz Rosenthal remarks that "the problem of freedom found little positive attention in [Muslim] legal works."; Franz Rosenthal, *The Muslim Concept of Freedom prior to the Nineteenth Century* (Leiden: Brill, 1960), 33.

<sup>39</sup> Rosenthal, *Muslim Concept of Freedom*, 9-10, 23.

placed on a slave. Slavery was “a legal weakness (*ḍaʿf ḥukmī*)” or “a legal handicap (*ʿajz ḥukmī*).”<sup>40</sup>

But as Graeber points out, if freedom is natural (read, right), but at the same time “freedom and slavery are just matters of degree, then, logically, would not *all* restrictions on freedom be to some degree unnatural” (read, wrong)?<sup>41</sup> Clearly not. But then when does restriction move from the normal to the realm of morally wrong? And what would we say about situations categorized as ‘slavery’ in which restrictions on freedom didn’t reach that point? Would that ‘slavery’ still be wrong? At various points in history people categorized as slaves could own property, earn a living, have a family, bequeath and inherit property, and they enjoyed legal protection against mistreatment from their owners. The status of many slaves in the Ottoman Empire in the eighteenth and nineteenth centuries, for example, did not differ much from their contemporaries working as free wage laborers in Britain (see my [previous paper](#) on defining slavery). These slaves certainly lacked some of the rights and advantages of free people in Ottoman society, but swaths of people categorized as free in the past and present have also lacked these advantages. In an important article on efforts to define slavery, Suzanne Miers admits that understandings of what freedom is and isn’t differ between cultures. She offers that, nonetheless, “some forms of curtailment of personal liberties are universally considered to be forms of slavery.”<sup>42</sup> Yet she does not actually specify what these are. Where exactly, then, do we locate the intrinsic wrongness of slavery?

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<sup>40</sup> ʿAlāʾ al-Dīn ʿAbd al-Azīz al-Bukhārī, *Kashf al-asrār ʿan Uṣūl Fakhr al-Islām al-Bazdawī*, ed. Muḥammad al-Baghdādī (Beirut: Dār al-Kitāb al-ʿArabī, 1991), 4:463 (*riqq* is a *ḍaʿf ḥukmī* that leads one to be the property of another); Shams al-Dīn Muḥammad b. al-Khaṭīb al-Shirbīnī, *Mughnī al-muḥtāj*, ed. Muḥammad Khalīl Aytān, 4 vols. (Beirut: Dār al-Maʿrifa, 1997), 3:36 (*ʿajz ḥukmī yaqūmu biʾl-insān bi-sabab al-kufr*).

<sup>41</sup> David Graeber, *Debt: The First 5,000 Years* (New York: Melville House, 2011), 204.

<sup>42</sup> Suzanne Miers, “Slavery: A Question of Definition,” *Slavery & Abolition* 24, n. 2 (2003): 2.

## Slaves as Property

The notion of slavery-as-property became the dominant definition of slavery in the early modern period, as the Abolitionist movement gathered steam from the 1780s onward. Though not all instances of servile labor in history have involved people being legally owned, slavery-as-property, has been cemented into place though the definition of slavery put forth in the 1926 Slavery Convention (reaffirmed in the subsequent 1957 Supplementary Convention): [slavery](#) is “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised...”<sup>43</sup> It is also present in the Roman and Islamic traditions. The Qur'an in one place juxtaposes a person with full capabilities to “a slave, owned” (Qur'an 16:75). Indeed, the word ‘owned (*mamlūk*)’ became one of the primary technical terms for a slave in Islamic civilization. For Muslim jurists, becoming the property of someone was understood as a result of the legal weakness or handicap that defined the slave status.<sup>44</sup>

But the concept of property is even more fraught than the notion of freedom. A person’s ownership of something or something’s status as property are not static or simple. In American law, ownership is construed as a ‘bundle of rights’: the rights to use, exclude, destroy and sell off. Sometimes an owner has some of them, often with significant restrictions, and sometimes the owner has them all. I might own property, but others might have an easement (a nonpossessory right to use my land). Or there might be covenants, conditions and restrictions (CC&R) that limit how I can use my home and the land it occupies. Ownership is complicated and contested.

And it’s mere convention that we don’t apply the concept of ownership to people. As Orlando Patterson has pointed out, if by ‘ownership/property’ we mean the

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<sup>43</sup> For example, slaves were not legally ‘owned’ in imperial China for the technical reason that Chinese law could not categorize people as ‘things; Pamela Kyle Crossley, “Slavery in Early Modern China,” in *The Cambridge World History of Slavery: Volume 3 AD 1420-1804*, ed. David Eltis and Stanley Engerman (Cambridge: Cambridge University Press, 2011), 187.

<sup>44</sup> ‘Alā’ al-Dīn al-Bukhārī, *Kashf al-asrār*, 4:463.

right to control and make use of, then people own each other in lots of ways because of the relationships and rights we have with and over one another. That we call relationships to things ‘ownership’ but do not use that term for relationships to people has more to do with how we want to project our image of relationships than with the actual degree of control.<sup>45</sup> Sometimes this is exposed. In English, suddenly describing a relationship between notional, legal equals in the idiom of ownership (ex. “[I own you](#),” even [in Britain](#)) is to lay bare the real, definitive power differential disguised by our ownership averse social niceties. What one society terms a relationship of ‘partnership’ or a religious sacrament another might define in the idiom of ownership.<sup>46</sup> Is a relationship morally acceptable in the first two cases but indefensible in the third? Should we declare a relationship to be an intrinsic, gross moral wrong simply because it’s phrased in the idiom of ownership when its actual nature might be no different from relationships we consider normal (think about our pets versus our children)?<sup>47</sup>

## Slavery as Inequality

The first argument we noted for an intrinsic evil in slavery was that it involved fundamental inequality among human beings. A keen observer might suggest that focusing on slavery and its definition is barking up the wrong tree. If inequality itself is an evil, then slavery is simply the most extreme example of the real moral wrong at hand, namely relationships of inequality and power imbalances. Aren’t these the roots of exploitation?

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<sup>45</sup> Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982), 22.

<sup>46</sup> Crossley, “Slavery in Early Modern China,” 191.

<sup>47</sup> The bizarre way in which domination, love, and ownership can commingle confusedly is evident in the liminal case of pets. We have immense affection and loyalty to our pets (and vice versa), and they enjoy a great deal of legal protection against mistreatment. But we own them. We are their ‘masters’ and can even destroy them if we see fit. But cinemagoers know that killing someone’s dog can move even a [seasoned gunfighter](#) to [tears](#), (see film *Open Range*, 2003) lead to [vendetta mayhem](#) (see *John Wick*, 2014) and that men will die to defend their dogs (see the film *White Fang*, 1991). People do not usually think of their owning their pets as an ethical problem. Human ownership of animals does come under scathing criticism, but in general because either they are being mistreated (e.g., in circuses) or because they are species that live in complex social groups and are [ripped from their families](#) when brought into captivity. But there are some [more radical](#) animal rights activists who call for the ‘abolition’ of animal ownership because both the status of owning them as property and exploiting them are comparable to slavery.

This observation is packed with more insight than it seems at first. A leading scholar of slavery, Paul Lovejoy, has argued that the signal feature of slavery is that, however a society defines freedom or property, etc., the slave is always distinguished from—and below—the free. It is this distinction that counts.<sup>48</sup> Yet the distinction between slave and free is just one possible marker of inequality. If it becomes just one of many, and perhaps not even the most dramatic, as seems to have been the case in medieval Scandinavia, then the free/slave distinction loses much of its importance and moral sting.<sup>49</sup> One of the obstacles that those raising the alarm over ‘modern slavery’ (see below) have faced is that, in today’s world, the features they argue define modern slavery sometimes don’t stand out in a global political and economic system replete with gradations of freedoms and rights. Citizenship and documented legal status are just two of the *legal* ways that some people are denied the freedoms and rights enjoyed by others for no reason other than the accident of birth.

Debating the rightness or wrongness of inequality is a worthy discussion, but it is one that strikes at a question much more fundamental than that of slavery: Is inequality in human societies wrong? Or is it only inequity that is wrong (i.e., individuals not getting what they deserve or have earned, as opposed to each person getting an equal share)? Is the good of individuals and a community best served by accepting as natural and right certain hierarchies and relationships of limited domination and exploitation? Or should humans seek to remove these features from our societies altogether?

Here we are faced with the dichotomy best summarized in the disagreement between radical calls for equality by many French Revolutionaries and the archetypal Conservatism of Edmund Burke (d. 1797), who criticized them. Burke believed that society was built on and out of families, traditions, the relationships of authority between the different levels of society, and the respect for property. These are all inherently unequal. As Burke wrote in response to the revolution in

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<sup>48</sup> Paul Lovejoy, “Slavery in the context of ideology,” in *The Ideology of Slavery in Africa*, ed. Paul E. Lovejoy (Beverly Hills, CA: Sage, 1981), 11-15. See also James L. Watson, “Introduction: Slavery as an Institution: Open and Closed Systems,” in *Asian & African Systems of Slavery*, ed. James Watson (Oxford: Basil Blackwell, 1980), 3-5.

<sup>49</sup> Ruth Karras, *Slavery and Society in Medieval Scandinavia* (New Haven: Yale University Press, 1988), 156-66.



France, “men all have equal rights, but not to equal things.” Nor do they have equal rights to the same “share of power, authority, and direction....” People should enjoy liberty and certainly not be oppressed or treated unacceptably, but trying to remove all hierarchies of power and all degrees of exploitation was both unnatural and anarchic.<sup>50</sup> The most radical French revolutionaries, on the other hand, held that existing hierarchies and inequalities should be swept away. The new state and society should enforce equality, not equity, since notions of certain individuals ‘deserving’ their wealth, power or status had no natural basis and could thus be eliminated in a giant leap into a bold new world.<sup>51</sup> Reasonable people have and will continue to disagree on which position is correct. But that is a debate between contrasting political and social philosophies. It's not the issue at hand. For our purposes, the question is, if there is some degree of inequality and exploitation allowed in society, when does that degree reach the point of gross, intrinsic moral wrong? Societies disagree on the answer. So where is the moral evil of slavery located?

## Slavery as the Threat of Violence

Finally, perhaps the most compelling definition for slavery has been offered by New Abolitionist activists trying to combat those vestiges of the phenomenon that still exist, such as debt bondage and human trafficking. Because almost no one in the world today is legally classified as property (the definition of slavery most utilized by the Abolitionist movement of the eighteenth and nineteenth centuries), new definitions of slavery are needed if similar types of exploitative treatment are to be identified and labelled as slavery today. The feature most commonly identified as defining ‘New Slavery’ is violence or its threat, the condition of “not being able to walk away.” A leading voice in the campaign against New Slavery, Kevin Bales, has defined slavery as “control based on the potential or actual use of violence; a lack of remuneration beyond subsistence;

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<sup>50</sup> Burke, *Reflections on the Revolution in France*, ed. Thomas H.D. Mahoney (Indianapolis: Bobbs-Merrill, 1955), 58, 68, 89, 103.

<sup>51</sup> See Hannah Arendt, *On Revolution* (London: Penguin, 1990; reprint of Viking Press, 1963), 21-23, 34.

and the appropriation of labor or other qualities of the slave for economic gain.”<sup>52</sup> Bales has elsewhere defined slavery as “The total control of one person by another for the purpose of economic exploitation...,” a situation in which people are “controlled by violence and denied all of their personal freedom to make money for someone else.”<sup>53</sup> (Perhaps revealing the difficulty of defining slavery, Bales has also offered a definition centered on the loss of free will, saying that slavery is “a state marked by the loss of free will, in which a person is forced through violence or the threat of violence to give up the ability to sell freely his or her own labor power.”)<sup>54</sup>

Bales is not naïve. He acknowledges that there are many wage laborers who have little choice in what they do, but they are not slaves. For him, slavery is a much more intense and controlling phenomenon in which the person in question is exploited ruthlessly. And violence or its immediate threat are omnipresent.<sup>55</sup>

Again, we are confronted with a question. If we take this notion of violence as the key to identifying slavery, how close and how impending does its threat have to be for the moral approbation of slavery to apply? As citizens of modern states, we all live under the shadow of violence from the organs of those states, though it often seems far off for many of us. For others, it is not far off at all, as has been amply demonstrated by the experience of African American men at the hands of the police and, more recently, the stunning number of instances in which police have shot or killed unarmed African Americans for negligible causes. As has been illustrated by scholars like Michelle Alexander, African Americans moved from

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<sup>52</sup> See Kevin Bales, “[Testing a Theory of Modern Slavery](#),” [2]; Julia O’Connell Davidson, *Modern Slavery: The Margins of Freedom* (New York: Palgrave Macmillan, 2015), 2, 36-7; Bales, *Understanding Global Slavery* (Berkeley: University of California Press, 2006), 57.

<sup>53</sup> Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 2012), 29. One of the interesting observations Bales makes is that, in some ways, New Slavery is worse than Old Slavery. For example, in Old Slavery as he defines it, slaves were very expensive and valuable, so maintaining them was important. New Slavery is based on the incredible cheapness and availability of human labor. Modern-day slaves are, in effect, disposable; Bales, *Disposable People*, 35.

<sup>54</sup> Bales, *Understanding Global Slavery*, 57.

<sup>55</sup> Interestingly, according to Bonnassie, “liberty” in medieval South-Western Europe basically meant that one could not be beaten or lashed. Serfs, villeins, and even servants could be; Bonnassie, *From Slavery to Feudalism in South-Western Europe*, 19.

slavery to formal freedom, and then eventually to formal equal rights. But the very real and immediate threat of violence, whether at the hands of slave-owners, lynch mobs, or law enforcement, has remained a constant feature. Thus, again, we find ourselves dealing with a spectrum. Where on this spectrum of violence or the threat of violence does the intrinsic and gross moral evil of slavery appear?

We should pause to take note of an important shift. Opponents of New Slavery define slavery not by formal categories, such as unfree or human property, but instead by specific conditions or treatment. This presents new challenges. The usefulness of formal categories is precisely that they are formal categories. Everything that falls within them is 'slavery,' and everything outside is not. If modern slavery is not a formal legal status but rather a level of mistreatment, then we can no longer talk about or look for categories. We have to look for specific types of conditions or abuse. So the difference between a poor but still 'free' Indian construction worker in the Persian Gulf and a 'modern slave' Indian construction worker in the Persian Gulf is the difference between 1) an Indian construction worker who has accepted a multi-year contract to work under grueling conditions for very low pay, surrendered his passport and agreed to live with numerous restrictions on his movement, with these rules enforced by company security services; and 2) someone who fits exactly the same description but who receives slightly lower wages and whose employer's guards are slightly crueler. Not to diminish the plight of either of these workers, but this is analogous to the difference between a restaurant that barely passes health inspection and one that barely fails. Or, more aptly, it is the difference between a Southern slave owner who treats all his slaves with respect and makes sure they are all educated and well cared for; and one who overworks and sometimes beats his slaves. The intrinsic wrong is no longer a function of a category but rather of a degree of exploitation or abuse.

## When Slavery is ‘Not that Bad’: The Problem with Conditions vs. Formal Categories

Now, to be very, very clear, in what follows I am not arguing that slavery in Muslim societies was benevolent or pleasant. Islamic civilization was too vast to make such a generalization. I am simply offering two (unedited) reports for the purpose of understanding the nature of the moral problem of slavery.

The following was sent to me by an American Muslim scholar who was studying in Mauritania in 2005:

*I basically asked why there didn't seem to be a drive amongst a number of slaves in the desert villages to seek freedom, especially considering the various attempts the authorities in Nouakchott (the capital) had made to inspect out there. Some of the things mentioned in the response were:*

- What exactly am I to do with this freedom? I'm part of a tribe that takes care of my shelter and food. Do I have to do that by myself? Do I have worry about zakat and taxes?*
- My kids can study with the teachers if they wish. Many of our children are fuqaha (legal scholars) and huffaz (people who have memorized the Qur'an).*
- I take care of the livestock, get water from the well and sometimes takes trips to sell meat or buy rice. I keep my prayers, and I don't cheat anyone. I don't have much, but I'll be light when I meet my Lord. What else do I want?*

*Admittedly, the slaves I saw lived under very pious, just masters. I'm sure the situation was different for others, but these men and women were certainly not yearning for freedom.*

And the following was sent to me by a female anthropologist working in Saudi Arabia:

*Once I saw one young girl run into the room where I was talking with a fairly high-ranking prince, just casually. She raced in to hug and kiss him on the forehead, interrupted us, and he asked her how school was that day. She explained her homework to him and he said he'd help her later when I left. I asked him, when she left, who was this girl who was as black as a Nubian slave? He replied that it was the daughter of his 'servant' Muhammad. I was surprised, and the prince laughed and said, my God do you actually think we don't treat them like family? They ARE family. This is Islam: they are treated with love and gentility. He was later getting much mileage from our dinner guests, at my expense. They all understood: the West cannot get out of the notion of Western 'slavery' and project it to other cultures. Indeed, this family lived better than I did by far, affording a new Mercedes for his sons every year. I asked Muhammad if he'd ever leave and return to Sudan. Over his dead body, no. He will stay with the prince for life. And this matches the historical records of 'slaves' as they were then called, almost exactly.*

These are just two contemporary testimonies of an observation that was common amongst Western commentators on Ottoman slavery from the sixteenth to the nineteenth century: that under the Shariah, slaves were treated humanely, perhaps better than the indigent in Western lands (Muslim travelers among Europeans had the opposite impression).<sup>56</sup> What these reports point out is that, if you move the cause of moral condemnation from formal categories of 'slave' to a set of deplorable conditions, then it's very possible that some situations of people falling under our usual, formal category of 'slave' might be significantly better than those defined deplorable conditions. In fact, in some instances, individuals or groups might prefer slavery to what they had experienced or felt they were likely

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<sup>56</sup> Ogier De Busbecq, *Turkish Letters*, trans. E. S. Forster (London: Eland, 2001), 69-70; Charles White, *Three Years in Constantinople*, 3 vols. (London: Henry Colburx, 1845), 2:297 ff; Howard Temperley, "The Delegalization of Slavery in British India," *Slavery & Abolition* 21, n. 2 (2000): 174-75; Suzanne Miers, "Slavery and the slave trade in Saudi Arabia and the Arab states on the Persian Gulf, 1921-63," in *Abolition and its Aftermath*, ed. Gwyn Campbell (London: Routledge, 2005), 121; Anthony Reid, "Introduction: Slavery and Bondage in Southeast Asian History," in *Slavery, Bondage and Dependency in Southeast Asia*, ed. Anthony Reid and Jennifer Brewster (New York: St. Martin's Press, 1983), 15. Mirza Abu Talib, an Indian Muslim from Lucknow, describes the Dutch he encountered in Cape Town in 1799 as "more oppressive to their slaves than any other people in the world." See Mirza Abu Taleb, *Westward Bound*, trans. Charles Stewart (New Delhi: Oxford University Press, 2005), 25.

to experience as free people (see footnote for addressing the issue of ‘adaptive preference’).<sup>57</sup> In such cases, there would be no grounds for declaring those situations morally wrong.

To review, there is a big problem with attaching the judgment that slavery is a gross, intrinsic moral wrong to the formal legal categories of unfreedom or humans-as-property: these categories are not clear-cut at all. In fact, they are either spectrums or abstractions on and in which people whom we definitely do not label as ‘slaves’ have lived and still live to this day on a daily basis. And few would be willing to categorize all these situations in the past or these situations in the present as gross, intrinsic moral wrongs. Assuredly, we might not like to find ourselves in some of, say, America’s more subordinated or compelled socioeconomic stations. But we’d be hard pressed to call the existence of those stations an intrinsic, gross moral wrong. Only by being more specific about where, when or how a tipping point into moral evil has been reached can one really make a claim that slavery is an intrinsic and gross moral wrong.

One might reply: OK, these are spectrums and abstractions, but there is a point at which a reasonable person would say, ‘This is a truly undesirable condition, and that’s where the intrinsic, gross moral wrong of slavery appears.’ What this argument would be doing, however, would be pivoting the slavery-as-intrinsic-moral-wrong claim away from the moral wrong of statuses like humans-as-property or humans-as-unfree towards a natural law reasoning of ‘There are

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<sup>57</sup> The concept of adaptive preference is used in rational choice theory and is often found in feminist work. In brief, it’s the idea that people in unpleasant or oppressive relationships/situations essentially cope with these by deciding that things are not so bad or that they don’t need them to be any better. So an abused wife can cope with living with her husband by internalizing the idea that she doesn’t deserve any better or that this is as good as it gets. She might even *choose* to remain with him because of this. Viewed from the perspective of adaptive preference, victims essentially surrender important portions of their autonomy. Critics of how this concept is used, however, point out that an abused wife or, in our case, a slave might actually be seizing and expressing their autonomy in a profound but unexpected way in choosing to embrace or even remain in their situation. More importantly, relying on adaptive preference, or the similar theory of false consciousness, militates against the fundamentals of applied liberalism and democracy, namely that individuals are able and entitled to decide what they want. See [here](#) for an excellent discussion of adaptive preference. For a fascinating discussion about how Black churches accepted and helped promulgate pro-slavery understandings of Christianity—perhaps they had little choice but to—see Charles Irons, *The Origins of Proslavery Christianity* (Chapel Hill: University of North Carolina Press, 2008). For the argument that seeing ‘adaptive preference’ as an act of reclaiming agency by the oppressed only further cements the power of the oppressor, see Saidiya Hartman, *Scenes of Subjection: Terror, Slavery and Self-Making in Nineteenth-Century America* (Oxford: Oxford University Press, 2007).



certain conditions that humans can agree are morally repugnant.’ But here the problem is that reasonable people disagree on what those conditions are. Many in the West would say that being classified as property or unfree would alone suffice as a morally repugnant condition. The testimony of the slaves above shows that at least some reasonable people disagree with that.

One could also move the argument away from slavery-as-intrinsic-moral-wrong towards a consequentialist argument of ‘Statuses like humans-as-property, humans-as-unfree are so likely to lead to unacceptable treatment that that they are effectively intrinsic wrongs.’ In saying this, however, one is shifting the argument about slavery’s moral wrongness away from the intrinsic to the consequential. If slavery is a moral wrong not because of what it is in and of itself but rather because of what it very often has led to, then the first axiom of the Slavery Conundrum has vanished. Slavery is no longer an intrinsic, gross moral wrong. It’s just very bad policy.

## Identifying the Zone of Intrinsic Moral Wrong on the Spectrum of Dependent Labor

Once one frees oneself from a binary mindset of free/unfree, not-property/property when thinking of slavery, one can engage in non-binary moral judgments. If at various points in history people who were classified as slaves (because they were ‘not free,’ because they were ‘owned,’ etc.) actually enjoyed many of the rights and privileges we associate with not being a slave, and if from this point we can chart progressively more and more dominating, exploitative, rights-depriving, and violent forms of dependent labor until we arrive at a person being denied all the rights we imagine for a human being, then we can assign gradually more and more severe moral judgments. Leading scholars of slavery in world history speak of a “[continuum of dependency](#),” with relatively mild forms of relationships like bonded labor on one end and the most absolute form of slavery

on the other.<sup>58</sup> Is there, on this spectrum of dependent labor and of socioeconomic-legal statuses, a segment that we could declare an intrinsic moral evil, without any complication? How could it be determined?

One way would be via the route of divine command. In the case of Islam, any form of dependent labor that violated the agreed-upon restrictions of the Shariah, or infringed upon the slaves' agreed-upon rights under the Shariah, would be condemned as prohibited and unacceptable.

Stepping outside of Islam, we could try to identify at which point an institution of dependent labor violated basic rights as articulated by national law reasoning. The French Catholic philosopher Jacques Maritain (d. 1973) wrote that, though the right of personal liberty (to “lead one’s life as one’s own master, answerable before God and the laws of the city”) is a natural right (i.e., man’s natural state), it has never been possible for human societies to achieve it fully. Human structures of economy, labor, and our hierarchies of power have prevented this. While less severe types of servility or servitude can be viewed as contrary to a second tier of natural rights—such as the right to “free choice of employment” (as stated in the Universal Declaration of Human Rights)—and should be combated as improvements in technology and economy allow, these are not intrinsically morally wrong or denials of basic rights. What the natural law tradition has considered to be “absolutely contrary” to foundational natural rights, says Maritain, is “slavery in its absolute form, in which the body and life of the slave as well as his primordial goods, like the freedom to marry, are at the mercy of the master.”<sup>59</sup> Similar arguments had been made by American natural law theorists in the nineteenth century in their defense of Biblical slavery. It had not, as Davis described, entailed “total degradation.”<sup>60</sup>

So what are the basic rights of slaves according to Western natural law reasoning? As articulated in the [Catholic natural law](#) tradition of the eighteenth and

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<sup>58</sup> David Eltis and Stanley Engerman, “Dependence, Servility, and Coerced Labor in Time and Space,” in *The Cambridge World History of Slavery Volume 3*, 3.

<sup>59</sup> Jacques Maritain, *Les Droits de l’homme et la loi naturelle* (Paris: Paul Hartmann, 1943), 105, 107.

<sup>60</sup> Davis, *The Problem of Slavery in the Age of Revolution*, 552.

nineteenth centuries, slave owners had the following restrictions: they could not treat slaves cruelly or overburden them, deprive them of adequate food or clothing, separate husband and wife or a mother from her young children. These restrictions were based on Thomas Aquinas' (d. 1274) [analysis](#) of how the unnatural state of slavery could not be allowed to remove natural rights like the ones above.

But why choose this basic, first-level of natural rights as the boundary for absolute moral condemnation? Why act on this minimalist application of natural law reasoning when modern natural law philosophers have articulated dozens of rights that they believe are human rights, such as the right to the free choice of one's work, due to all people? Isn't this preordaining the answer to the question 'At what point would dependent labor would be considered morally evil?' by setting the lowest possible bar? I think it's best to argue along minimalist lines because a maximalist approach to natural law quickly undermines the entire basis for natural law reasoning. Natural law's claim to authority is that it is recognizable, intelligible, and compelling to human reason, regardless of culture or religion. This is a tenable claim when articulating basic rights, such as life, family, food, shelter and belief. But it loses its clout when scholars argue that the free choice of work or freedom of sexual relationship are also natural rights, clearly discernible to every 'reasonable' person. Many intelligent and sophisticated reasoners see the right to the free choice of work as a luxury and the right to freedom in sexual relationships as altogether unnatural.

Slavery is, in fact, the Achilles' heel of natural law arguments. If the authority of natural law rests on the claim that reasonable people and thoughtful people aware of human nature should all come to certain shared moral realizations, then what does it tell you that over a millennium and a half of the best practitioners of this reasoning all concluded that slavery was morally acceptable? Modern advocates of natural law have tried to write off this colossal error as a flawed application of their method. But if its founders and greatest articulators got something so enormously wrong, why should we have any confidence in the conclusions of modern practitioners? The issue of slavery reveals that national

law reasoning can only make claims to categorical authority about absolute rights and wrongs if it sticks to its lowest common denominator.<sup>61</sup>

## Riqq in the Shariah

What about the Islamic institution of *riqq*, the main term for slavery under Islamic law? Would it qualify as “slavery in its absolute form”? Of course, there is tremendous internal diversity in the Shariah, and there was even more diversity in how slaves were actually treated in the oceanic geographical and temporal expanse of Islamic civilization (see my next article on this). So here we will try to provide some generally consistent features in the letter of the Shariah, organized along the lines of important rights.<sup>62</sup> We will not get into the multitude of local slavery practices and institutions in Islamic civilization because here we are interested in what Islamic law in its ideal form permitted and what it forbade.

- In terms of religious practice, Muslim slaves had the right to perform their required prayers but were not required to attend the Friday communal prayer, pay *zakat*, or perform *Hajj*. Slaves could attend Friday prayer if their master allowed it, and a preponderance of jurists even allowed slaves to lead the Friday prayer. Slaves could lead daily congregational prayers due to *hadiths* stating that slaves did so during the time of the Companions.<sup>63</sup> A Muslim master could not force their non-Muslim slave to convert to Islam,

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<sup>61</sup> This has been pointed out in relation to MacIntyre’s criticism of Aristotle’s approval of slavery, which MacIntyre argues cannot be accepted under natural law. It was, indeed, seen as acceptable under natural law by centuries of that system’s greatest thinkers, which means that there must be multiple natural laws and thus multiple truths, which undermines the whole concept of natural law. See Rafael Ramis-Barceló, “Alasdair MacIntyre on Natural Law,” in *The Threads of Natural Law*, ed. Francisco José Contreras (London: Springer, 2013), 205-6.

<sup>62</sup> For a useful survey of rulings on a wide variety of issues concerning slaves in the Hanafi school, see Mona Siddiqui, *The Good Muslim: Reflections on Classical Islamic Law and Theology* (Cambridge: Cambridge University Press, 2012), 36-66. See also Ruud Peters, “Islamic Law and Human Rights: a contribution to an ongoing debate,” *Islam and Christian-Muslim Relations* 10, n. 1 (1999):12-13.

<sup>63</sup> Ibn Qudāma al-Maqdisī, *al-Mughnī*, ed. ‘Abdallāh al-Turkī and ‘Abd al-Fattāḥ al-Ḥuluw, 12 vols. (Cairo: Hujr, 1986), 2:29, 196.

and one could not prevent a *dhimmī* slave from performing their religious obligations, nor from drinking wine.<sup>64</sup>

- In terms of the right to free movement, this was under the control of the master unless the slave had an agreement to buy back their freedom over a period of time (*mukātaba*—best translated as gradual self-purchase, it was a very common practice, especially in the Ottoman realm, at least some parts of West Africa, and most likely elsewhere as well),<sup>65</sup> in which case they could not be prevented from travel.<sup>66</sup>
- In terms of other roles in social and political life, slaves cannot be the leader (imam, caliph) of the Muslim *umma* because of their legal incapacity in owning property (see below). Slaves could serve in lesser leadership positions due to Prophetic *hadith* ordering obedience to commanders “even if he is an Ethiopian slave.”<sup>67</sup> Only the Hanbali school allowed slaves to serve as witnesses in court, but the school’s reasoning is instructive: being a slave has no link to uprightness (*‘adāla*), virtue (*muruwwa*), piety or knowledge, so slavery has no impact on functions based on these qualifications.<sup>68</sup> Slaves could engage in contracts and agreements if permitted by their master, and slaves could even make binding offers of protection for non-Muslims travelling in Muslim lands.<sup>69</sup> Slaves could and did take free people to court for violating contracts or similar arrangements.<sup>70</sup>

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<sup>64</sup> “Riqq,” in *al-Mawsū‘a al-fiqhiyya*, 35 vols., 2nd. ed. (Kuwait: Wizārat al-Awqāf, 1983), 23:12.

<sup>65</sup> The translation ‘gradual self-purchase’ comes from Emily Berquist, “Early Anti-Slavery Sentiment in the Spanish Atlantic World,” *Slavery & Abolition* 31, n. 2 (2010): 184. See Polly Hill, “Comparative West African Farm Slavery Systems,” in *Slaves and Slavery in Muslim Africa II*, ed. John Ralph Willis (London: Frank Cass, 1985), 38. *Mukātaba* has parallels in Babylonian and Greek slavery, and the Mishna and Syriac law code as well; Jonathan Brockopp, *Early Mālikī Law: Ibn ‘Abd al-Ḥakam and his Major Compendium of Jurisprudence* (Leiden: Brill, 2000), 170.

<sup>66</sup> Ibn Qudāma, *Mughnī*, 12:375.

<sup>67</sup> Ibn Hajar, *Fath al-Bārī sharḥ Ṣaḥīḥ al-Bukhārī*, ed. ‘Abd al-‘Azīz Bin Bāz and Muḥammad Fu‘ād ‘Abd al-Bāqī, 16 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 13:153.

<sup>68</sup> Ibn Qudāma, *Mughnī*, 12:71.

<sup>69</sup> Ibn Qudāma, *Mughnī*, 10:432.

<sup>70</sup> See Ahmed Akgündüz, *Ottoman Harem* (Rotterdam: IUR Press, 2015), 122-3.

- In terms of marriage and family relations, slave mothers could not be separated from their young children, with the Hanbali school holding that separating any family members to the level of uncles/aunts is prohibited and Hanafis classifying it as strongly discouraged (all due to numerous *hadiths* on this).<sup>71</sup> The Hanbali and Shafi schools did not allow a master to force a male slave to marry or divorce against his will.<sup>72</sup> A master could not prevent a slave woman who was married from being with her husband at night, and a married slave woman was off limits for her owner physically as well as in terms of what he could see of her body.<sup>73</sup> A master was required to arrange a marriage for a male or female slave who expressed a desire for a partner (or, in the case of a female slave, a master could make her his concubine).<sup>74</sup>

The issue of sex with female slaves is a probably the most troubling aspect of slavery for modern minds. It crystallizes the slavery conundrum like nothing else. And yet it was not questioned in the ancient Near East and the Mediterranean even in the early Christian centuries.<sup>75</sup> According to the Qur'an, both marriage and ownership (in the case of a female slave) were relationships in which sex was licit (Qur'an 23:5-6). Within these relationships, consent for sexual relations was assumed. In other words, the relationship itself entailed ongoing consent for sex (but only if the slave girl was solely owned by one man and that she was not married; otherwise, she was off limits). Kecia Ali has observed that there is no evidence for any requirement for consent for sex from slave women in books of law from the

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<sup>71</sup> "Riqq," in *al-Mawsū'a al-fiqhiyya*, 12:39.

<sup>72</sup> This created a duty that could only be created by agreement with the slave; "Riqq," in *al-Mawsū'a al-fiqhiyya*, 41:264, 267

<sup>73</sup> Ibn Qudāma, *Mughnī*, 9:316, 7:459; "Riqq," in *al-Mawsū'a al-fiqhiyya*, 23:12.

<sup>74</sup> Ibn Qudāma, *Mughnī*, 8:150, 9:315; "Riqq," in *al-Mawsū'a al-fiqhiyya*, 23:26.

<sup>75</sup> Mendelsohn, *Slavery in the Ancient Near East*, 50; Judith Evans Grubbs, *Law and Family in Late Antiquity* (Oxford: Clarendon, 1995), 313-16. Unlike in Islamic law, Babylonian men could have sex with their wives' slave women too; Mendelsohn, *Slavery in the Ancient Near East*, 50; Kecia Ali, *Sexual Ethics and Islam* (Oxford: Oneworld, 2006), 39-55.

eighth to the tenth centuries.<sup>76</sup> In this regard, slave women had a status similar to underage daughters. Both could be married off by their fathers without their consent (since their consent had no legal bearing).<sup>77</sup> The marriage contract is different from the consummation, which could only occur when daughters had reached maturity as determined by the standards of a given community.<sup>78</sup> Ali has written about how slavery and “femaleness” often resembled one another as handicaps in the letter of Islamic law.<sup>79</sup> And the historian Ehud Toledano insightfully observed that the lack of choice faced by female slaves taken as concubines by their owners did not differ much from the lot of brides headed into marriages arranged by their families, neither in medieval Islamic civilization nor in Western Europe.<sup>80</sup>

The Shariah offered protection to both wives and concubines, but it came not under the rubric of consent but that of harm. By definition, the crime of rape (i.e., forced *zina*) could not occur within a licit relationship.<sup>81</sup> But transgressive harm could still be done by the man. Wives and concubines could complain to local judges if they were being abused or if his demands for sex were excessive.<sup>82</sup> The Hanbali scholar al-Buhūtī (d. 1641) even says

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<sup>76</sup> Kecia Ali, “Concubinage and Consent,” *International Journal of Middle East Studies* 49, n. 1 (2017): 149; Hina Azam, *Sexual Violation in Islamic Law* (Cambridge: Cambridge University Press, 2015), 180.

<sup>77</sup> See Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010), 31-39.

<sup>78</sup> Jonathan Brown, *Misquoting Muhammad* (London: Oneworld, 2014), 142.

<sup>79</sup> See Ali, *Marriage and Slavery in Early Islam*.

<sup>80</sup> Ehud Toledano, *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 84.

<sup>81</sup> Azam, *Sexual Violation in Islamic Law*, 186.

<sup>82</sup> See, for example, Abū ʿĪsā Sīdī al-Mahdī b. Muḥammad al-Wazzānī (also al-Wāzzānī) (d. 1923-4), *al-Nawāzil al-jadīda al-kubrā fī-mā li-ahl Fās wa ghayrihim min al-badū waʾl-qurāʾ / al-Miʿyār al-jadīd al-jāmiʿ al-muʾrib ʿan fatāwā al-mutaʾakhhirīn min ʿulamāʾ al-maghrib*, ed. ʿUmar ʿImād (Casablanca: Maṭbaʿat al-Faḍāla, 1418/1997), 3:437-38. Here is an interesting case of harm being dealt with by a judge. A Mālikī scholar named Abū Ṭāhir al-Dhuhlī (d. 979) dealt with the following case in Egypt:

And a woman brought [the complaint] to [the judge] that her husband had a hairy penis and that she could not bear it. So he ruled that she not prevent him [from having sex with her] on the days that he used depilatory syrup (*yatanawwaru*). Then he said to him (i.e., the husband): Use the depilatory syrup every day if you like.

See Muḥammad b. Yūsuf al-Kindī and Ibn Ḥajar, *Kitāb al-Wulāt wa kitāb al-quḍāt wa Rafʿ al-īṣr ʿan quḍāt miṣr*, ed. Rhuvon Guest (Beirut: al-Ābā, 1908 and Leiden: Brill, 1912), 584.



that if a master forced a slave woman unable to bear intercourse to have sex, she would be freed as a result.<sup>83</sup> (For more on the issue of concubinage and consent, see the Appendix at the end of this article.)

- The slave's right to property was a complex issue in Islamic law, since the main proof texts seemed to resist the principles that jurists felt were entailed by the status of slavery. Most clearly, the Qur'an urged masters to agree to *mukātaba* contracts if their slave sought one. The fact that the slave would be amassing money to pay the installments suggests some ownership rights.<sup>84</sup> The Prophet ﷺ also said in an agreed-upon *hadith* that, when selling a slave, "The slave's property/wealth belongs to the seller." This affirms the notion of a slave owning property, but it also clearly states that this property will be kept by the master if he sells the slave off. This latter point led the majority of jurists to conclude a principle that slaves cannot own property or, at the very least, 'The wealth of the slave belongs to the master.' Since the master owns both the slave and the slave's production (*manfa'a*), this majority school of thought said it made no sense that the slave could have his or her own property.

In the Maliki school, however, as well as in one opinion in the Shafi and Hanbali schools, slaves had qualified property ownership provided their master affirmed it.<sup>85</sup> Ibn Qudāma (d. 1223) states that, if the master gives his slave something then it's the slave's property, since a slave is a human being and has the same basic capacity to own as a free person.<sup>86</sup>

There was consensus that slaves could neither inherit nor bequeath, though in the Hanbali school a *mukātab* slave could bequeath to their heirs

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<sup>83</sup> *al-jāriya allatī lā tuṭīqu al-waṭ'*; Maṣṣūr al-Buhūtī, *Kashshāf al-qinā' 'an matn al-Iqnā'*, 6 vols. (Beirut: Ālam al-Kutub, 1983), 4:514.

<sup>84</sup> The slave's limited property rights resemble the Roman notion of the slave's peculium as well as Babylonian law and Old Testament law, although under the Shariah slaves had much more control over property given them by their masters; Brockopp, *Early Mālikī Law*, 181; Mendelsohn, *Slavery in the Ancient Near East*, 67, 74.

<sup>85</sup> In the Maliki school, male slaves could actually own concubines; Ali, *Marriage and Slavery in Early Islam*, 165, 173.

<sup>86</sup> Ibn Qudāma, *Mughnī*, 4:256.

if the slave had enough property to have purchased their own freedom at the time of their death.<sup>87</sup> In addition, one opinion in the Hanbali and Shafi schools was that a slave who had been partly freed (i.e., by one of his owners in a shared ownership situation) could bequeath and inherit on a prorated basis.<sup>88</sup>

- In terms of the right to life and physical integrity, it was prohibited to kill or seriously injure one's slave.<sup>89</sup> In the Hanafi school of law, this was even punishable by death. Any severe punishment or treatment that left lasting scars was grounds for forced manumission (either *de facto* or *de jure*), and in the Ottoman period (the period for which we have the best records), slaves often approached courts on these grounds.<sup>90</sup> Castrating slaves was prohibited.<sup>91</sup> A master could discipline their slave verbally or physically, but the majority position was that this could not exceed what a husband/father could do to his wife or child (other jurists allowed harsher punishment due to an inference from the *hadith*, "Would one of you hit his wife like a slave and then sleep with her at the end of the day?").<sup>92</sup>
- In terms of treatment, *hadiths* made it clear that slaves had to be fed from the food of their owners, clothed from their clothes, and not overworked.<sup>93</sup> Some aspects of the slave's treatment were based on local conventions of what was reasonable and normal, on the basis of a *hadith* stating that, "The slave is owed his food and his clothing according to what is right in custom

<sup>87</sup> On the basis of the Prophet's *hadith*: *in kāna li-aḥadikunna mukātab wa kāna 'indahū mā yu'addī fa'l-taḥtajib minhu*; *Sunan* of Abū Dāwūd: *kitāb al-'itq, bāb fī al-mukātab yu'addī ba'ḍ kitābatihī fa-ya'jizu aw yamūtu*; *Jāmi' al-Tirmidhī*: *kitāb al-buyū', bāb mā jā'a fī al-mukātab idhā kāna 'indahū mā yu'addī*; Ibn Qudāma, *Mughnī*, 7:132.

<sup>88</sup> Ibn Qudāma, *Mughnī*, 7: 133 ff.; "Riqq," in *al-Mawsū'a al-fiqhiyya*, 23:91-2.

<sup>89</sup> This had become the basic law in the Roman Empire after the second century CE.

<sup>90</sup> Toledano, *As if Silent and Absent*, 61, 72, 84-8; al-Kindī, *Kitāb al-Wulāt*, 317-8.

<sup>91</sup> This had been prohibited in Roman law in the late first century CE; William I. Westermann, *The Slave Systems of Greek and Roman Antiquity* (Philadelphia: American Philosophical Society, 1955), 114.

<sup>92</sup> Ibn Qudāma, *Mughnī*, 9:317. Apparently Roman law introduced the notion of slaves receiving one half the punishment of free people; Brockopp, *Early Mālikī Law*, 137. Punishment of slaves was much lighter in practice in Roman Egypt; Westermann, 105. Exodus 21:26-7 tells masters to free slaves if they strike them severely.

<sup>93</sup> *Ṣaḥīḥ Muslim*: *kitāb al-aymān, bāb iṭ'ām al-mamlūk mim mā ya'kulu wa ilbāsihi mim mā yalbīsu wa lā yukallifuhu mā yaghlibuhu*; *Ṣaḥīḥ Bukhārī*: *kitāb al-aymān, bāb al-ma'āṣī min amr al-Jāhiliyya*.

(*ma'rūf*)....”<sup>94</sup> Slaves could not be overworked, but what constituted a normal workload was based on customary understandings of workload in that society (it’s interesting to note that the rebel who motivated many of the African slaves in the alluvial plains of Iraq to revolt in the famous ninth-century Zanj rebellion paraphrased this *hadith* in his invectives against their masters, who had “done to them what God has prohibited”).<sup>95</sup>

Other aspects of slaves’ treatment had firmer guidelines. Masters had to provide slaves with dress comparable to other slaves in that society, but their clothing had to be appropriate to the weather and could not be limited merely to covering the slave’s nudity (*‘awra*).<sup>96</sup> And a master could not require a slave to work for money if the master was then going to take those earnings from them. Such an exchange had to come as part of a *mukātaba* agreement.<sup>97</sup> If a slave became sick, crippled or old, the master still had to provide for them because that responsibility stemmed from ownership, not from the slave’s work.<sup>98</sup>

In the case of *riqq*, slave men and women had rights that were comparable to other dependent segments of society, such as minor children or wives (except wives had full capacity to own property and engage in contracts, etc.): slaves had the right to unencumbered conjugal relationships; the right to religious observances; limited rights to property (we should remember that the Shariah granted male and female slaves more rights to property ownership than married British women had until the late nineteenth century); and in terms of physical integrity and protection from abuse and exploitation, their position was similar to that of wives and minor children, including the owner’s obligation to care for slaves unable to work.

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<sup>94</sup> See *Ṣaḥīḥ Muslim: kitāb al-aymān, bāb iṭ‘ām al-mamlūk mim mā ya’kul....*; Ibn Ḥajar, *Faṭḥ al-Bārī*, 5: 218-9. For this, see Joel Blecher, *Said the Prophet of God: Hadith Commentary across a Millennium* (Oakland: University of California Press, 2018), 188-90.

<sup>95</sup> Al-Ṭabarī, *Tārīkh*, 5:444.

<sup>96</sup> “*Riqq*,” in *al-Mawsū‘a al-fiqhiyya*, 23:25.

<sup>97</sup> Ibn Qudāma, *Mughnī*, 9:314.

<sup>98</sup> Ibn Qudāma, *Mughnī*, 9:315.

Although the conditions imagined here are clearly inferior in many ways to the conditions of non-slaves, *riqq* as outlined in the Shariah cannot be classified as the absolute domination referred to by Aquinas or Maritain. Nor did it merit the Enlightenment condemnations of American slavery from figures like Condorcet (d. 1794), who objected as much, if not more, to the particular brutalities of the Atlantic slave trade as he did to the concept of slavery itself, or of Montesquieu, who saw slavery in Muslim realms as “mild” and more akin to a “reciprocal” agreement entered willingly between slaves and master.<sup>99</sup> There is, of course, the issue of sex with slaves, which I’ll deal with at the very end of this essay.

It’s accepted that Islam did [not inaugurate](#) a novel regime of slavery. The Qur'an’s references to slavery were references to an unquestioned fact of life in the seventh century. As Muslim jurists developed the Shariah’s laws on *riqq*, they were greatly influenced by the existing traditions of servitude and dependent labor in the Late Antique Near East. What the Qur'an did was to bring unprecedented incentives to free slaves: 1) the use of alms to help free slaves and aid freed ones; 2) requiring freeing slaves as an expiation for certain sins or crimes; 3) and the encouragement of *mukātaba*.<sup>100</sup> The precedent of the Prophet ﷺ and Islamic law as it coalesced formally from the mid eighth century onward introduced new restrictions on enslavement and new rights for slaves: people could not be enslaved for debt, for punishment, and they could not sell themselves or their families into slavery (all major causes of enslavement at various points in prior millennia). In the practice of concubinage, the Shariah uniformly prohibited sex with *mukātaba* slaves, and—perhaps the most

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<sup>99</sup> See Marquis de Condorcet, “On Slavery. Rules for the Society of the Friends of Negroes (1788),” in *Condorcet: Political Writings*, ed. Steven Lukes and Nadia Urbinati (Cambridge: Cambridge University Press, 2012), 148-55, especially p. 150; idem, *Outlines of an historical view of the progress of the human mind* (Philadelphia: M. Carey, 1796), 166 (available [here](#)); Montesquieu, *Esprit des lois*, ed. Laurent Versini, 2 vols. (Paris: Gallimard, 1995), 1:443-49, 469-78 (see books 14:ii, 15:i, and 15:v-vi, 15:x).

<sup>100</sup> Brockopp, *Early Mālikī Law*, 137-8, 170.

unprecedented of all rules—the children born of concubines received exactly the same legal status and social standing as children born of free wives.<sup>101</sup>

## Do Some People Deserve to be Enslaved... and Some Don't?

Perhaps the aspect of slavery that is most troubling to many is none of the ones mentioned so far. Most people would agree that there are certain circumstances in which people can be deprived of their freedom, for example if they commit a crime. Many in the US (but certainly [not all](#)) find no ethical problem in those prisoners' labor being exploited.<sup>102</sup> And many people accept that a prisoner could be tortured to extract information in the proverbial 'ticking time bomb' scenario. But in each of these cases the person deprived or subjected to this treatment has at least notionally committed some wrong for which they deserve what is happening to them.

In the U.S. context we are so accustomed to talking about slavery as a subject of immense moral condemnation, and as bound intimately to insidious conceptions of racial superiority, that we forget that, in the heritage of Western Europe (Roman, Near Eastern, Germanic), slavery was not a racial or moral issue at all (though from the Carolingian period onwards there were concerted efforts by the Church to end the enslavement of Christians). Unlike the race-based slavery of the Americas, where there was at least an attempt (as repulsive and baseless as it

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<sup>101</sup> Robinson, "Prosopographical Approaches to the Nasab Tradition," 136-40. The concept of *umm walad* goes back to the Code of Hammurabi, but it is greatly improved in the Shariah; Mendelsohn, *Slavery in the Ancient Near East*, 50-2.

<sup>102</sup> Kevin Bales writes about the problem of categorizing prison labor as modern slavery that prisoners held without due process by illegitimate regimes are reasonably assessed as slaves, while "[w]hen an inmate of a British prison is voluntarily enrolled in a work project for which he or she is remunerated, this can hardly be described as slavery"; Bales, *Understanding Global Slavery*, 58.

was) to justify slavery by arguments of racial superiority/inferiority, for most of human history slavery has not been explained by any reference to race or class.<sup>103</sup>

As has been observed about slavery in the ancient Near East and the Roman Empire alike, slavery was a “misfortune” that could befall anyone. A slave was once a baby like anyone else, wrote a [Roman satirist](#), “until cruel fate trod him down.” Aristotle, Cicero and other moral philosophers could talk all they wanted about the just, ‘natural slavery’ of those unable to govern themselves, and Church Fathers could speak about how slavery resulted from sin. But they all knew that these categories did not map on to reality at all. Anyone, moral pillar or cad, Roman or barbarian, Christian or pagan, was one financial disaster or pirate raid away from being a slave.<sup>104</sup> Even if we could assign some blame to a person for falling in debt or being captured by an enemy, what about a child born of a slave mother and father and thus born into that condition through no evident fault of its own?

The randomness of enslavement caused discomfort for Muslim jurists as they tried to define and theorize *riqq*. The default, natural state of human beings is freedom, they agreed. So how could the enslavement of people who had committed no crime, or the birth of a child into slavery, be explained? What basis was there for them being moved out of this default condition? A tendentious explanation was put forth in what became one of the standard definitions of slavery, namely, ‘A legal weakness/handicap remaining as a vestige of unbelief.’ Because in the Shariah only non-Muslims living outside the Abode of Islam could be legally enslaved, Muslim scholars proposed that slavery was a punishment for their unbelief. Even a slave who converted to Islam still suffered some earthly discomfort by living as a slave, which Muslim scholars pointed out was superior to suffering in the afterlife.

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<sup>103</sup> As Mendelsohn discusses, slavery in the ancient Near East seems to have begun with foreign captives. But eventually most slaves were members of the in-group who had fallen into slavery due to debt or poverty; Mendelsohn, *Slavery in the Ancient Near East*, 1, 23-5.

<sup>104</sup> Graeber, *Debt*, 202; Mendelsohn, *Slavery in the Ancient Near East*, 42.

But this explanation was extremely flimsy. First of all, as the Prophet ﷺ explained to a recent convert eager for his past sins to be forgiven, “Islam wipes away what came before it.”<sup>105</sup> Second, the same schools of thought that formulated this etiology for slavery also held that people outside the lands of Islam who had either no knowledge or grossly inaccurate information about Islam were not held accountable by God for not embracing it.<sup>106</sup> So why would people who would not have been punished by God on the Day of Judgment for not being Muslim have to be punished by God in their earthly life for not being Muslim?

The Shariah, like Roman law, saw freedom as the default status of human beings and their natural state; a child found abandoned was assumed to be free. And the Shariah tradition reiterated again and again that God’s law “looks eagerly towards freedom,” as was made most clear by the Qur’an’s and the *hadiths*’ repeated commands and encouragements to free slaves.<sup>107</sup>

But for Muslim jurists, freedom was not the non-derogable human right it is today, like the right not to be mutilated or killed without just cause.<sup>108</sup> One could

<sup>105</sup> *Musnad* of Aḥmad Ibn Ḥanbal, 4:199, 4:204.

<sup>106</sup> See Abū Ḥāmid al-Ghazālī, *On the Boundaries of Theological Tolerance in Islam: Abū Ḥāmid al-Ghazālī’s Fayṣal al-Tafrīqa*, trans. Sherman A. Jackson (London: Oxford University Press, 2002), 126. These people were known as the *Ahl al-Fatra*, roughly translatable as ‘People of Times of Vitiating Prophecy,’ the term based on the wording of Qur’an 5:19 and the principle laid out in Qur’an 17:15, namely that “No bearer of burdens will bear the burden of another, and We would not punish [a people] until We had sent a messenger.” That those who died in a time of weakened prophecy will be judged independently on the Day of Judgment is also affirmed in a *hadith* referring to the *Ahl al-Fatra*, which is found in the *Ṣaḥīḥ* of Ibn Ḥibbān and other, less rigorous collections. Al-Suyūṭī considered its various narrations to be *ḥasan*, and al-Albānī ranked it as *ṣaḥīḥ*; Al-Suyūṭī, *al-Ḥāwī li’l-fatāwā*, 2 vols. (Beirut: Dār al-Kitāb al-‘Arabī, n.d.), 2:404; al-Albānī, *Silsilat al-aḥādīth al-ṣaḥīḥa*, #1434, #2468.

<sup>107</sup> *Tashawwafa al-shāri’ li’l-ḥurriyya*; I cited this from Muḥammad Ibn ‘Arafa (d. 1400), a Mālikī scholar of Tunis, but it can be found in many, many works; *Qurraṭ al-‘ayn fi-fatāwā ‘ulamā’ al-Ḥaramayn*, ed. Muḥammad ‘Alī al-Mālikī (Cairo: Maṭba‘at Muṣṭafā Muḥammad, 1356/1937), 276. This concept can be found very early in Islamic history, in the *Kitāb al-Taḥrīsh* of Ḍirār b. ‘Amr (d. 815), where the author writes that “God wishes freedom”; Ḍirār b. ‘Amr, *Kitāb al-Taḥrīsh*, ed. Hüseyin Hansu and Mehmet Keskin (Istanbul: Dār al-Irshād, 2014), 127. Thanks to Omar Anchassi for this citation.

<sup>108</sup> Did the Shariah see freedom as a human right (*ḥaqq al-ibād*)? Medieval Hanafi legal theorists proposed that human beings were born in a state of receptiveness and accountability to the responsibility and trust that God had placed on mankind. This came by dint of their being humans, not from revelation. As a result, some Hanafi scholars like al-Dabūsī (d. 1039) argued that, in order to be able to be held accountable by God, humans are born with “the right of bodily inviolability, freedom and the capacity to own (*ḥaqq al-iṣma wa’l-ḥurriyya wa’l-mālikiyya*).” But al-Dabūsī acknowledges that these are present in the species as a whole but can be absent from some individuals. Today, some Muslim scholars point to this as evidence that the Shariah envisions a human right of freedom. This is misleading, however. It builds a faulty assumption on the shared term ‘right (*ḥaqq*).’ Yes, these Hanafi scholars saw



lose one's status as a free person if one was legally enslaved (in the Shariah, when a non-Muslim from outside the Abode of Islam was captured or when a slave woman gave birth to a child). Since there was no fault or legitimating cause for this loss of freedom, the best way to understand how Muslim jurists conceived of the justification for enslavement is to return to the concept of 'misfortune' mentioned by the modern scholars above. The term is a solid translation for the Islamic legal concept of *muṣība*, or a misfortune that befalls someone and can deprive them of a legal right or cause them suffering, but which was either not caused by a wrong or which cannot be compensated for. Slavery was precisely such a phenomenon. Like bankruptcy or disease, slavery was just something bad that happened to someone as part of God's grand and unfathomable plan.

Of course, slavery is not a natural phenomenon. People enslave people. But that does not mean that people have always ideally *chosen* to enslave people, making this moral choice in a vacuum. People are subject to economic forces that often make choices for them. Our oldest records about slavery, from the ancient Near East, suggest that it started as a means of dealing with enemy captives in war.<sup>109</sup> This was the main type of slavery present in Arabia at the time of the Prophet ﷺ. Long before the early modern period, when states emerged with the resources to handle masses of prisoners of war, absorbing captives into the population as slaves either to work or to be ransomed back to their peoples was a useful mechanism. In Babylonia and the world of the Old Testament, however,

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freedom as the necessary natural state of humans. But that was not very different from the maxim agreed upon by all Muslim scholars, namely that 'The default state of human beings is freedom.' Unlike the modern human rights assertion that not being enslaved is a human right, the right of freedom for these Hanafi scholars was not a non-derogable right as it is enshrined in the Universal Declaration of Human Rights or the 1966 [International Covenant on Civil and Political Rights](#), Article 8.1. Just as reason could be lost by a person who was insane or life and property could be taken from a person for just cause, Muslim jurists held that freedom could be lost when someone was legally enslaved. In the Shariah prior to the last century, non-Muslim/non-*dhimmī* captives in war and non-Muslims from outside of Muslim lands, purchased from slave traders, were legally enslaved; Abū Zayd al-Dabūsī, *Taqwīm al-adilla* (Beirut: Dār al-Kutub al-'Ilmiyya, 2001), 1:417-18 (thanks to Arnold Yasin Mol for this citation). See also al-Wazzānī, *al-Mi'yār*, 10:333, where the author quotes al-Wansharīsī (d. 1508) describing freedom (*ḥurriyya*) as something associated with a "right of God (*ḥaqq Allāh*)." Shaykhzāde (d. 1544) makes a similar remark in describing why part of the Qur'anic compensation for accidental homicide (Qur'an 4:92), namely freeing a slave, cannot be waived by the victim's kin because it is a right due to God (*ḥaqq Allāh*), while the kin can refuse to take the *diya* money, which is their right; Muḥyī al-Dīn Shaykhzāde, *Ḥāshiyat Muḥyī al-Dīn Shaykhzāde 'alā Tafsīr al-Bayḍāwī*, ed. Muḥammad 'Abd al-Qādir Shāhīn, 8 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1999), 3:384 (thanks to Arnold Yasin Mol for this citation).

<sup>109</sup> Mendelsohn, *Slavery in the Ancient Near East*, 1.

the single greatest reason for enslavement was debt or poverty, including the indigent selling themselves or their kin into slavery to improve their lot. This phenomenon was common from Western Europe to Southeast Asia for centuries (though Islam prohibited it).<sup>110</sup>

Slavery was a choice made, sometimes by the powerful and sometimes by the vulnerable, because it was the preferred solution to the material, economic challenges at hand. This is how we explain three British Enlightenment thinkers, each a vocal advocate of the natural right to liberty, separately proposing that the problem of widespread and severe poverty in eighteenth-century Britain be dealt with by enslaving the poor to save them from ruin. Liberty was of tremendous importance to these philosophers, but it could not be enjoyed by all people all the time. They concluded that, in the case of the very poor in their society, it had to be sacrificed to stabilize what they saw as the bottom rung of that society (ironically, their description of this restricted form of slavery was similar to *riqq*).<sup>111</sup>

Returning to the Shariah, a clear question arises: if slavery was just an unpleasant fact of life—perhaps akin to occupying the poorest rung on the socioeconomic ladder—why do the Qur'an and *Sunna* call Muslims so consistently to free their slaves? Why did the Prophet ﷺ, according to one *hadith*, mutter over and over as he lay on his deathbed, “Prayer and those whom your right hands possess”?<sup>112</sup> If slavery was just the lowest rung on the ladder—and there is always a lowest rung—why worry about it or try to move people out of it?

The answer is, of course, that simply because the Shariah did not see slavery as an intrinsic, grave moral wrong does not mean that it was seen as desirable. Poverty is a useful comparison; it seems to exist everywhere and could befall anyone, but that doesn't mean we shouldn't try to alleviate it. Yet neither was *riqq* the worst

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<sup>110</sup> Mendelsohn, *Slavery in the Ancient Near East*, 5, 23; Miers, “Slavery: A Question of Definition,” 6.

<sup>111</sup> These three were Bishop George Berkeley (Irish) (d. 1753), Andrew Fletcher (d. 1716), and Francis Hutcheson (d. 1746). See M.J. Rozbicki, “To Save Them from Themselves: Proposals to Enslave the British Poor, 1698-1755,” *Slavery & Abolition* 22, n. 2 (2001): 32-39.

<sup>112</sup> *Sunan* of Abū Dāwūd: *kitāb al-adab, bāb fī ḥaqq al-mamlūk*; *Sunan Ibn Mājah: kitāb al-waṣāyā, bāb hal awṣā Rasūl Allāh ṣallā Allāh ‘alayhi wa sallam*.

fate according to the Shariah.<sup>113</sup> Slavery was an unfortunate and unhappy condition that it was best to remove people from it **if doing so would benefit them.**

A crucial difference between the Shariah's conception of slavery and our modern one is that , moving people from the category of slave to free was not the ultimate good according to the Shariah. It was not, for example, more important than providing non-Muslims with an environment in which they would be encouraged to convert.<sup>114</sup> Nor was it more important than ensuring that vulnerable and incapable slaves were cared for. So the Qur'an's exhortation to masters to agree to *mukātaba* contracts if their slaves proposed them ends with the conditional, "if you see good in them" (Qur'an 24:33). This was most commonly understood as the slaves having the capacity to earn a living once they were freed.<sup>115</sup> The Maliki school prohibited owners from freeing their slaves if

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<sup>113</sup> In two of his publications, Dr. Khaled Abou El Fadl has quoted the famous Mu'tazilite scholar Qāḍī 'Abd al-Jabbār (d. 1025) saying that slavery was inherently repugnant/wrong (*qubḥ fī dhātihī*). But the author includes no reference for this quotation. I have not been able to locate it in 'Abd al-Jabbār's *Mughnī*. Certainly, 'Abd al-Jabbār describes slaves as suffering physical harm (meaning pain, suffering). But, as Sherman Jackson has pointed out, 'Abd al-Jabbār explicitly states that, because God allows and even, on some occasions, commands slavery, it *must* be morally acceptable and serve some legitimate human interest; Khaled Abou El Fadl, *The War on Terror* (Oxford: Oxford University Press, 2009), 200; idem, "Cultivating Human Rights: Islamic Law and the Humanist Imperative," in *Law and Tradition in Islamic Thought*, ed. Michael Cook et al. (New York: Palgrave Macmillan, 2013), 176; Sherman Jackson, *Islam and the Problem of Black Suffering* (Oxford: Oxford University Press, 2009), 184. 'Abd al-Jabbār's original wording is "*idhā kāna bi-ibāḥatihi (ya'nī istikhḍām al-'abīd) ta'ālā wa amrihi bidhālīka 'alimnā ḥusn istikhḍāmihim wa'l-iḍrār bihim*"; Qāḍī 'Abd al-Jabbār, *al-Mughnī fī abwāb al-tawḥīd wa'l-'adl*, ed. Ibrāhīm Madkūr et al., 15 vols. (Cairo: al-Mu'assasa al-Miṣriyya, 1960-696), 13:465. It's also important to note the conception of rational moral objectivism (*ḥusn wa qubḥ al-'aqlī*, namely that acts have inherent moral rulings that could be discovered by reason alone and were binding on God because God had fused this moral dimension into their nature) as found in the early Mu'tazila of the eighth and ninth centuries CE became more complex in the tenth and eleventh centuries. By the time that 'Abd al-Jabbār was writing in the late tenth/early eleventh century, Mu'tazila thinkers acknowledged that this inherent moral ruling could switch based on circumstances or modality. This was still moral objectivism, it just was determined by the interaction of acts with context. See Jackson, *Islam and the Problem of Black Suffering*, 60.

<sup>114</sup> Muḥammad b. 'Alī al-Qaffāl al-kabīr al-Shāshī, *Maḥāsīn al-sharī'a*, ed. Muḥammad 'Alī Samak (Beirut: Dār al-Kutub al-'Ilmiyya, 2007), 201-2; Shāh Walī Allāh, *Ḥujjat Allāh al-bāligha*, ed. Sayyid Aḥmad Balanpūrī, 2 vols. (Deoband: Maktabat Ḥijāz, 2010), 2:515. There is also the *hadith* that "God is pleased with those people who enter the Garden in chains," which has been understood as meaning those brought into Islam by slavery; *Ṣaḥīḥ al-Bukhārī: kitāb al-jihād wa'l-siyar, bāb al-asārī fī al-salāsīl*. Thanks to Omar Anchassi for his help on this.

<sup>115</sup> Ebu Su'ud Efendi, *Tafsīr* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), 6:172; al-Tha'ālabī, *Tafsīr* (Beirut: Mu'assasat al-A'lāmī, n.d.), 7:96; Ibn Ḥajar, *Fath al-Bārī*, 5:241 (Ibn Ḥajar feels that none of the reports attributed to Ibn 'Abbās on this verse are reliable).

they would be worse off free.<sup>116</sup> The prominent Hanbali jurist Ibn Qudāma wrote that, “What is recommended is manumitting those who are religious and have the capacity to earn a living and would thus benefit from manumission.” Otherwise, he explained, these freed slaves would be burdens on others. In addition, if the owner felt that it was likely that the freed slave would return to non-Muslim lands (*dār al-ḥarb*), apostatize from Islam or do some other harm, then it is disliked (*makrūh*) to free the person. And if any of these was very probable (*ghalabat al-ẓann*) then it would be prohibited (*ḥarām*).<sup>117</sup>

## The Past as Moral Authority: Can We Part with the Past?

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<sup>116</sup> Brockopp, *Early Mālikī Law*, 152.

<sup>117</sup> Ibn Qudāma, *Mughnī*, 12:234.



The above Facebook comment was made by a prominent African-American Muslim academic in the wake of the Charlottesville protests. Its message is clear: there is a way out of the Slavery Conundrum, namely to let go of the notion that our Founding Fathers have any moral claim on us. If slavery is evil, and George Washington owned slaves, then why not just call a shovel a spade and throw George Washington's legacy where it belongs, on to the refuse heap of history?

That would be logical reasoning. But the refuse heap would be immense. It would, in fact, contain the vast majority of mankind's philosophical, legal, and religious heritage. **The architects of every major philosophical and religious tradition either endorsed slavery, condoned it or, at the very least, saw it as morally tolerable.** Of course, that doesn't make slavery right. But since almost all our arguments for declaring things to be gross, intrinsic wrongs rely on the authority or the ethical systems that these traditions developed, it is much harder to argue that all things we call slavery merit that ruling.

We have already discussed how many of the world's great religions viewed slavery. In the Greco-Roman philosophical tradition, Plato saw the proper

ordering and roles of adults and children, different professions and classes, “slave and free,” as essential for a just state.<sup>118</sup> His student Aristotle stated that it was wrong to enslave people by violence without the correct supervision of the law. Slavery was both permissible and just, however, if those enslaved were people who were unable to properly govern themselves. These were ‘natural slaves,’ said Aristotle, and in their case slavery was beneficial to both the slaves and the masters.<sup>119</sup>

Although it has been argued that the Stoics denied natural slavery,<sup>120</sup> their position was more complicated. Stoics affirmed the spiritual equality of all human beings, i.e., their equality in terms of their rights and duties as ethical beings before nature. But they also affirmed the social hierarchy of the better over the worse, the qualified over the unqualified, the naturally governing over the naturally governed. This was as natural and desirable as reason governing the emotions and appetites, the latter by force if necessary. So, like Aristotle’s natural slavery, enslaving anyone not unable to govern themselves was not unjust.<sup>121</sup> The great Stoic teacher Epictetus (d. 135 CE) was himself a former slave, and he wrote passionately that “You avoid slavery; take care that others are not your slaves,” and that “vice has no communion with virtue, nor freedom with slavery.” But denying the validity of slavery in the Ancient Mediterranean would have been like condemning the idea of private property in modern America, so Stoics like Epictetus had to stress over and over again that real slavery was not a matter of one’s formal legal status. Real slavery was to be controlled by one’s desires or fears, and true freedom came in mastering one’s internal self. “No man is free who is not master of himself,” wrote Epictetus.<sup>122</sup> (Christian thinkers like Augustine had to resort to the same argument to handle the fact that many Christians who were enslaved were much less sinful than their Christian masters).

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<sup>118</sup> Plato, *Republic*, 433d.

<sup>119</sup> Aristotle, *Politics*, 1255b 12-15; see Christopher Shields, *Aristotle*, 369-71.

<sup>120</sup> Christopher Brooke, *Philosophic Pride: Stoicism and Political Thought from Lipsius to Rousseau* (Princeton: Princeton University Press, 2012), 47.

<sup>121</sup> Cicero, *De Republica*, iii: 24-25.

<sup>122</sup> Epictetus, “Fragments,” published in *Enchiridion*, trans. George Long (Mineola, NY: 2004), 32 (#s 42-44).

In fact, the only Classical school of philosophy that did not see slavery as natural in some way were the Sophists and the Skeptics. But this was not because they were morally ahead of their time. They didn't think slavery was necessarily wrong, just that it was not naturally right. This was because they denied any universal, natural morality and believed that right and wrong were simply determined by local culture.<sup>123</sup>

There were rare voices that criticized slavery. This should not be confused with sympathy for slaves when they were mistreated, as we see in Diodorus' (fl. 1<sup>st</sup> century BCE) explanation that the slave rebellions that racked Sicily in the late second century BCE resulted from the awful abuse of the slaves.<sup>124</sup> There are questionable reports that the mysterious Jewish sect of the Essenes repudiated slavery because it diminished virtue amongst slaves and masters.<sup>125</sup> The early Christian author Gregory of Nyssa (d. 394 CE) wrote a passionate plea against enslaving humans, since every human being was equally an image of God and thus priceless, and only God could own such an item.<sup>126</sup> The French polymath Jean Bodin (d. 1596) was exceptional in stating that slavery (which he conflated with serfdom, since the two institutions had blended by the eleventh century) was an affront to religion and reason alike. It was obviously harmful to both masters (it brought out inhuman cruelty in them) and the slaves, and it was thus not natural at all.<sup>127</sup>

Only in the late 1600s and early 1700s did these solitary voices find any echo. The first stirrings of what emerged as the Abolitionist movement were found among the Quakers in the American colony of Pennsylvania. In 1693 George Keith (d. 1716) published a [short tract](#) warning Quakers of the moral and spiritual evils of

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<sup>123</sup> David Davis, *The Problem of Slavery in Western Culture* (Ithaca, NY: Cornell U. Press, 1966), 33.

<sup>124</sup> Theresa Urbainczyk, *Slave Revolts in Antiquity* (Berkeley: University of California Press, 2008), 82.

<sup>125</sup> These reports come from Philo and Josephus; Glancy, *Slavery as Moral Problem*, 9. Josephus' report is very brief and vague. See Josephus, [Antiquities of the Jews, 18.1.5](#).

<sup>126</sup> See Gregory of Nyssa's Fourth Homily on Ecclesiastes, in Stuart George Hall, ed., *Gregory of Nyssa Homilies on Ecclesiastes*, ed. (Berlin: Walter de Gruyter, 1993), 73-75; and Maria Mercedès (sic) Bergadá, "La condamnation de l'esclavage dans l'Homélie IV," in *ibid.*, 195.

<sup>127</sup> Heller, "Bodin on Slavery," 55-57.



slavery, stressing that Christ had come to free all mankind and that slavery violated the Golden Rule.

Around the same time, the immorality of slavery found expression amongst Christian philosophers such as Locke as well. The notion that humans had an inalienable right to liberty and that slavery was intrinsically immoral because it violated this right took shape only in the 1700s (see footnote for a sub-essay on this).<sup>128</sup> Montesquieu's rejection of the classical natural law arguments for slavery in his *Spirit of the Laws* molded Blackstone's (d. 1780) condemnation of slavery as "repugnant to reason and the principles of natural law" in his über-influential manual of law, which became the textbook of every British and American jurist from the 1770s onward.<sup>129</sup> French philosophes like Voltaire (d. 1778) and the authors of Diderot's (d. 1784) *Encyclopedia* mounted harsh invectives against

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<sup>128</sup> The treatment of the slavery question by eighteenth-century Enlightenment thinkers is complex. Slavery was a vexed issue, in part because during 1600s and much of the 1700s the economic systems of France and Britain profited greatly from slavery, in part because many of those who opposed slavery nonetheless had racist views towards Africans, and in part because slavery was also royal policy in France, so criticizing it could result in prison. Finally, the enmity that thinkers like Voltaire showed to slavery could be as much a product of their contempt for the Church, which supported slavery, as it was part of their conviction in liberty; Claudine Hunting, "The Philosophes and Black Slavery: 1748-1765," *Journal of the History of Ideas* 69, n. 3 (1978): 405-418. In addition, the racial issue was not simply one of 'racism.' Particularly in the early 1700s, discussions of race could not be separated from the greater discourse of scientific exploration and its debate over whether all the hominids encountered on the voyages of discovery were actually human beings or not. This greatly complicated the issue of whether there was one human nature or one, consistent natural law; Dorinda Outram, *The Enlightenment* (Cambridge: Cambridge University Press, 2005), 68-71. There was a strong sense amongst thinkers of the early 1700s that slavery was unnatural *for Europeans* but not necessarily for others. Locke argued that slavery was against natural law because people had a natural right to choose their own actions. But he followed the Romans in allowing people to enslave those who had attacked them or threatened the rights of others. Based on this, he specifically approved of enslaving Sub-Saharan Africans, since he felt they lived in a chaotic state of nature, attacking one another with no regard for rights; Jennifer Welchman, "Locke on Slavery and Inalienable Rights," *Canadian Journal of Philosophy* 25, n. 1 (1995): 67-81. Another pillar of Western liberalism and ideas of freedom, Montesquieu (d.1755), has views that are equally hard to pin down. He states in his famous *Spirit of the Laws* that slavery is against natural law, since all people are equal and born free (his book was a landmark in this application of natural law to the question). At other points in the book, however, he endorses Aristotle's natural slavery. But he limits it to those more tropical regions where the climate makes people both lazy and emotional (he claims). There slavery might be necessary for states to function. In such despotic regions slavery is "more tolerable" anyway, since the people there already live in "political slavery," and slavery in those regions is "mild" and more akin to a "reciprocal" agreement entered willingly between slaves and master; Montesquieu, *Esprit des lois*, ed. Laurent Versini, 2 vols. (Paris: Gallimard, 1995), 1:443-49, 469-78 (see books 14:ii, 15:i, and 15:v-vi, 15:x). See also Russell Jameson, *Montesquieu et l'esclavage* (Paris: Hachette, 1911), 321-330. Hunting argues that Montesquieu's ambiguity on the question of slavery was designed to protect him from punishment for his anti-slavery views; Hunting, 417.

<sup>129</sup> Robert M. Cover, *Justice Accused* (New Haven: Yale University Press, 1975), 15-16.

American slavery and the Atlantic slave trade, with one writing, “If a commerce of this kind can be justified by a moral principle, then there is no crime, however atrocious, that cannot become legitimate.”<sup>130</sup>

So how do we explain this moral awakening? Did a few pious Quakers in Pennsylvania, a handful of philosophers in Britain and France all just wake up around 1700 and realize that slavery was wrong? The greatest minds and souls of history had all been wrong about this, and these few pioneers finally got it right?

Basically, yes, according to the most prevalent, popular version of things (which we can term the **Moral Awakening view**). Although nineteenth- and early twentieth-century historians of the Abolitionist movement framed it as the gradual victory of right over wrong, this view is really a narrative of absolute moral progress. It’s not like, at the time of Aristotle or Jesus, a minority of philosophers and sages believed slavery was wrong and it just took almost two thousand years to convince anyone else of this. Until the late 1600s effectively *no one* thought slavery was wrong, let alone one of the ultimate injustices.

Indeed, it was a new narrative of ‘progress’ that provided the framework for the Abolitionist argument. A belief that history was progressing in a positive direction was unknown prior to the European Renaissance. The Classical Greco-Roman view was that history was cyclical. The Abrahamic view was that history was headed downhill from the preeminent moment of contact with the Logos (in Christ or the Qur'an). It was the influential thinkers of the eighteenth-century Scottish Enlightenment (among whose luminaries are names like David Hume and Adam Smith) who articulated a secular notion of human history as a linear progress of economic development, political refinement and concomitant social progress, from the primal to the increasingly civilized.<sup>131</sup> It was not some moral awakening that had led to the disappearance of slavery in Europe, wrote the Scottish historian and economist John Millar (d. 1801), but socio-economic change.<sup>132</sup> As

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<sup>130</sup> Claudine Hunting, “The Philosophes and Black Slavery,” 411.

<sup>131</sup> Daniel Carey, *Locke, Shaftesbury, and Hutcheson* (Cambridge: Cambridge University Press, 2006), 11.

<sup>132</sup> Davis, *Slavery and Human Progress*, 113.

we'll see, for the Christian argument for Abolition to take hold, it also had to adopt this narrative of moral progress.

By contrast, what is often called the **Economic Explanation** for the emergence of Abolitionism gained much support from historians and sociologists in the twentieth century.<sup>133</sup> They have pointed out that it is no coincidence that Jean Bodin was one of the first to condemn slavery as immoral; just prior to his time, slavery had disappeared in France due to economic reasons.<sup>134</sup> Nor was it mere coincidence that, in the grand sweep of human life and history, it was in the first areas to experience the massive increase in wealth and urbanization of the early Industrial Revolution that the moral condemnation of slavery was first expressed in any meaningful way and where it first gained traction. Britain's rate of economic growth in the eighteenth century was astounding, and, as Howard Temperley noted, the relative increase in wealth and population in Britain's North American colonies was unmatched in the world. Finally, it is no coincidence that Britain and the northern US states had achieved this growth without any significant reliance on slave labor.<sup>135</sup>

Temperley convincingly argues that the Moral Awakening and Economic Explanations are both correct in part. But they must be understood as a feedback loop, in which economic change created social circumstances in which slavery could realistically be condemned and which amplified a perception of progress, which then further drove the Abolitionist mission. The inhabitants of nineteenth-century Britain and the northern U.S. experienced an increase in wealth, technology, knowledge, and power that created a compelling sense that they were riding a wave of progress in every sense of the word.<sup>136</sup> Capitalism led them

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<sup>133</sup> "Few historians today discount the possibility of some connection between capitalism and antislavery."; Thomas Bender, "Introduction," in *The Antislavery Debate*, ed. Thomas Bender (Berkeley: University of California Press, 1992), 2.

<sup>134</sup> Heller, "Bodin on Slavery," 53-4. For how economic and political changes in Southeast Asia led to the end of slavery there, see Reid, "Introduction," 33.

<sup>135</sup> Howard Temperley refers to these two schools of thought as the economic and the intellectual diffusionist; Howard Temperley, "The Ideology of Antislavery," in *The Abolition of the Atlantic Slave Trade*, ed. David Eltis and James Walvin (Madison: University of Wisconsin Press, 1981), 26-27, 30.

<sup>136</sup> See Seymour Drescher, "The Shocking Birth of British Abolitionism," *Slavery & Abolition* 33, n. 4 (2012): 571-93.

to think about the present and future as things they could shape for both moral and material interests, and Abolitionism “reflected the needs and values” of the emerging capitalist system.<sup>137</sup> The Scottish Enlightenment vision of history as a process of growth and refinement provided a framework for Quaker abolitionists and French philosophers alike to express an idea of history as spiritual and moral progress.<sup>138</sup> Equally important, the fact that slavery had become economically obsolete the British and Northerners meant that they could afford to imagine it as morally evil. The speedy spread of Abolitionist conviction and the rapid steps taken by Britain to end the slave trade in the early 1800s further fueled this narrative of progress. As Davis describes, for nineteenth-century Western liberals, abolition was not just proof of some moral maturation. It was proof of “the transcendent purpose of history.”<sup>139</sup>

Another factor worth noting was the utter brutality of plantation slavery in the Americas and the Atlantic slave trade. This fact grabbed the attention of Enlightenment thinkers, whose criticisms of slavery often turn on the unique inhumanity of this system and, at times, call out the absurdities of its racial justifications.<sup>140</sup>

Whatever the case, the call to label slavery a moral evil and abolish it arose and first succeeded in the places and times that it was, perhaps for the first time in history, actually economically feasible to do so. That is not a coincidence. As Temperley describes, for all of human history until the late 1700s, “slavery was accepted with that fatalism which men commonly reserve for aspects of nature

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<sup>137</sup> Thomas L. Haskell, “Capitalism and the Origins of the Humanitarian Sensibility, Part 1,” in *The Antislavery Debate*, (republished from *The American Historical Review* 90, n. 2 [1985]), 107-35; Davis, *Slavery in the Age of Revolution*, 350.

<sup>138</sup> Davis, *Slavery and Human Progress*, 155.

<sup>139</sup> Davis, *Slavery and Human Progress*, 111.

<sup>140</sup> “We deprive the Negro of all his moral faculties and then declare him inferior to us, and consequently destined to carry our chains. This is a monstrous mixture of injustice and cruelty. No compassionate person could ever stop hoping for an end to this appalling situation, which contradicts all the laws of humanity.” See Condorcet, “On Slavery. Rules for the Society of the Friends of Negroes (1788),” in *Condorcet: Political Writings*, 150.

which, whether they are celebrated or deplored, have to be borne. To argue against slavery was to argue against the facts of life.”<sup>141</sup>

## The Consequences of Moral Progress

If humanity made a great leap of progress in the 1800s with its moral awakening about slavery, then what moral use is our heritage prior to that realization, when humanity was apparently morally asleep to this grave and ubiquitous wrong? Why should people pay any heed to philosophers or prophets who had not only not recognized slavery’s moral evil or condemned it, but who had often defended and justified it?

As can be expected, there were profound potential theological consequences for the Moral Awakening narrative. We can see it in a debate between the Abolitionist (and Founding Father) Benjamin Rush (d. 1813) and an American plantation owner. If slavery was a gross and intrinsic moral wrong, asked the owner, why had Jesus not condemned it? The Abolitionist response was that Jesus had not banned slavery because, if he had, he would have antagonized too many people. The plantation owner countered by accusing Rush either of being wrong or of being blasphemous, since if Jesus had known slavery was morally evil but had not spoken out against it then that would mean that the son of God had lacked the courage of his convictions.<sup>142</sup> As slave owners wrote in their petition to the Virginia legislature in 1785 opposing a law supporting manumission, “Christ, while on earth and giving instructions for things necessary for salvation, did not forbid [slavery]....”<sup>143</sup> In fact, as we have seen, the New Testament affirmed slavery.

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<sup>141</sup> Temperley, “The Ideology of Antislavery,” 29.

<sup>142</sup> Davis, *The Problem of Slavery in the Age of Revolutions*, 535, 538.

<sup>143</sup> Outram, *The Enlightenment*, 66. See also Michael Taylor, “British Proslavery Arguments and the Bible, 1823-33,” *Slavery & Abolition* 37, n. 1 (2016): 147-48.

Considering the problems that the text of the Old and New Testaments posed to the Moral Awakening narrative, it makes sense that the Christian drive for abolition first appeared amongst Quakers. More than any other Christian denomination, Quakers believed that the true message of Christ was not contained in the pages of the New Testament (which many Quakers believed was not entirely textually authentic anyway)<sup>144</sup> but in the Inward Light of guidance that God cast into the hearts of the faithful. More importantly, Quakers believed in “progressive revelation,” namely that God could speak to latter day people with the same authority as in Biblical times and communicate new knowledge about His will to them.<sup>145</sup>

Put simply, Quakers were not limited to the Bible to know the mission of Christ. It was not until well into the nineteenth century—a full century and a half after the first Quaker tracts against slavery—that the idea that the Bible was not the eternal word of God became widely accepted amongst mainline Protestants in Britain and the U.S.<sup>146</sup>

Pioneered by the Quakers, the Christian argument for Abolition was that, regardless of what Jesus or Paul said or did not say about slavery, Christ had been sent to liberate all mankind. He was like the epicenter of a wave of divine liberation, which future generations of Christians would amplify and carry forward, combatting injustice and oppression, until God finally revealed His full glory with the coming of His kingdom. Jesus had washed the feet of his companions, like a slave (Philippians 2:5-8), and he came in the role of the slave and the persecuted to free all of mankind by urging all to serve.<sup>147</sup>

This vision of moral and spiritual progress reconciled Christianity’s Biblical tradition with the Abolitionist mission. According to it, the slavery practiced by

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<sup>144</sup> Samuel Fisher, ‘Rusticus ad Academicos (The Rustic’s Alarm to the Rabbis),’ in *The Testimony of the Truth Exalted* ([No place]: [no publisher], 1679), 33; Travis Frampton, *Spinoza and the Rise of Historical Criticism of the Bible* (New York: T&T Clark, 2006), 216-19.

<sup>145</sup> J. William Frost, “Why Quakers and Slavery? Why Not More Quakers?,” in *Quakers and Abolition*, ed. Brycchan Carey and Geoffrey Plank (Urbana, IL: University of Illinois Press, 2014), 31-2.

<sup>146</sup> Davis, *The Problem of Slavery in the Age of Revolution*, 526-7.

<sup>147</sup> See Glancy, *Slavery as Moral Problem*, 23-27.

the Israelites in the Old Testament was abrogated by the new covenant of Christ, and Jesus had not been an absolute moral law but rather an ever-advancing moral standard moving forward through history.

But this Christian liberation take on the Moral Awakening narrative still doesn't resolve the slavery conundrum. It only glosses over it. As Christian opponents of Abolitionism pointed out, **if slavery was a deep and intrinsic moral wrong, then God would never have allowed it even in the Old Testament.**<sup>148</sup> To use a different example, would God have allowed cannibalism or human sacrifice *for anyone*, even in the Old Testament? In order to rebut this objection, Abolitionist churchmen had to violate the second axiom of our Slavery Conundrum—that slavery is slavery—by conceding that the slavery allowed for the Jews in the Old Testament was not “of such a nature” that it would be impossible for God to allow it at some points in history. This was in contrast to slavery in the Americas, which Abolitionists argued was a “monstrous aberration.”<sup>149</sup>

So, if Abolitionists wanted to insist on the gross, intrinsic evil of the Atlantic slave trade, they had to admit that Old Testament slavery was not as serious. If they wanted to condemn all slavery in history, they had to concede that not everything that fell under their broad, historic category of slavery was intrinsically evil, since God would never have commanded or allowed such a thing for anyone, anywhere, even in the Old Testament. The Christian liberation take on the Moral Awakening explanation thus violates either the first or second axiom of the Slavery Conundrum.

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<sup>148</sup> Bishop Richard Watson (d. 1816) wrote, “God cannot authorize injustice; but he did authorize slavery amongst the Jews; therefore slavery is not opposite to justice.” This was “the one short argument, if there were no other, which proves that slavery is not as such opposite to justice.” James Griffith wrote in the early 1800s: “If once it can be shewn that the Almighty ever did sanction the possession of bond servants or Slaves, the following unanswerable syllogism must be deduced . . . God never can or could sanction anything it itself unjust or wicked; But God did sanction the possession of slaves, with Abraham and among the Jews . . . Therefore, it must necessarily follow, that, the Possession of Slaves cannot, in itself, be either unjust or wicked.”; Taylor, “British Proslavery Arguments and the Bible,” 145. See also Davis, *The Problem of Slavery in the Age of Revolutions*, 545.

<sup>149</sup> Davis, *Slavery and Human Progress*, 112.

## Muslim Efforts to Salvage the Past



Much has been written about an Islamic argument for the abolition of slavery. Although I am writing a separate essay on that, I can mention the issue briefly here because it is actually very simple. **Prohibiting slavery in the Shariah would be—and has been—very straightforward.** It's a matter of a three-step argument: 1) Slavery is permitted in the Shariah, but it is not required. It's not even recommended (*mandūb*, *mustaḥabb*). Slavery was a global reality that Islam accepted as a fact. Islam did not inaugurate a renewed system of slavery, nor did it require Muslims to justify it. And there is no intrinsic good in *riqq*. 2) A Muslim ruler can invoke executive authority (*siyāsa*, *taqyīd al-mubāḥ*) to prohibit something otherwise permissible in order to achieve some common good (*maṣlaḥa*). This prohibition is administrative, like setting a speed limit. It does not change what is *halal* or *haram* according to God.<sup>150</sup> 3) Ergo, a Muslim ruler/government can prohibit slavery.

<sup>150</sup> 'Abd al-Ghanī Nābulusī, *al-Ḥadīqa al-nadiyya sharḥ al-Ṭarīqa al-muḥammadiyya*, 2 vols. (Istanbul: Maṭba'a 'Āmira, 1295/1878; reprinted Istanbul: Asetane, n.d.), 1:142-43. Here al-Nābulusī is either modifying or clarifying an opinion he expressed earlier in a treatise arguing for the permissibility of smoking. One of the arguments he notes against him was that the 'sultan had prohibited it.' Al-Nābulusī objects that the ruler can only forbid what is prohibited by God's law; idem, *Risāla fī ibāḥat al-dukhān* (Damascus: Maṭba'at al-Islāh, 1924), 8. The prescient scholar 'Abd al-Raḥmān al-Kawākibī (d. 1902) attributed this position to an anonymous scholar-friend, almost certainly Muḥammad 'Abduh (d. 1905); Rashīd Riḍā, "Tijārat al-riqq wa aḥkāmuhā fī al-Islām," *Manār* 21, n. 8 (Jan. 11, 1906): 8:839-41; al-Kawākibī, *'Abd al-Raḥmān al-Kawākibī: al-A'māl al-kāmila*, ed. Muḥammad 'Amāra (Cairo: Dār al-Shurūq, 2007), 548-55. Answering a question on whether or not a Muslim government could ban polygamy, the Tunisian Mālikī Shaykh al-Islām Muḥammad Ṭāhir Ibn 'Āshūr (d. 1973) replied, "The ruler can prohibit (*yamna'a*) the people from doing this permitted act due to the existence of some harm in it. And Islamic history is full of examples showing this..."; Ibn 'Āshūr, *Fatāwā al-shaykh al-imām Muḥammad Ṭāhir Ibn 'Āshūr*, ed. Muḥammad Ibrāhīm Bū Zughayba (Tunis: Markaz Jum'at al-Mājid, 2004), 364-5. See also Muḥammad Taqī 'Uthmānī, *Takmilat Fath al-mulhim* (Karachi: Maktabat Dār al-'Ulūm Karātshī, 2004), 1:272.



What's more, there is a moral [imperative](#) to free slaves woven into countless Qur'anic verses and *hadiths*. And in the Prophet's ﷺ command that slaves' masters not call them 'my slave ('*abdī*)' and that slaves not call their masters 'my lord,' "For indeed you all are slaves, and the lord is God most high," we see the theological tension inherent in slavery... a tension that can only be resolved by liberation.<sup>151</sup>

**The problem is that, in the many discussions I've had about slavery and Islam with Muslims and non-Muslims alike, it is never good enough to say that slavery is prohibited today. One must morally condemn slavery as a gross and intrinsic moral evil across space and time. Again, the real issue is the moral problem of slavery. In other words, our Slavery Conundrum.**

And thus Muslims find themselves faced with the same problem that confronted Christian Abolitionists of the eighteenth and nineteenth centuries. We all feel deeply that slavery is a profound moral evil across space and time, and that this applies to everything called 'slavery,' namely whenever a person was not free or was someone else's property. But if we say this, then we are saying that not only did Islamic law allow a profound moral evil, but that it was allowed in the very revelation of God in the Qur'an. What's more, we are saying that the Prophet of God ﷺ himself committed this profound moral evil.

This contradiction is not resolved by pleading that Islam intended to end slavery gradually because doing so all at once would have been too disruptive. The Qur'an prohibited alcohol totally during the Prophet's career and eliminated something even more central to Arabian life and economy: idolatry. Furthermore, why did the Qur'an or the Prophet not simply say, "Slavery is wrong. Maybe you can't end it right now, but end it as soon as possible"? Nor can this be resolved by arguing that the Prophet ﷺ eventually freed all his slaves. Because all available evidence makes it clear that he accepted at least two concubines and slept with them as concubines. We could deny these reports, but the permissibility of

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<sup>151</sup> *Sunan* of Abū Dāwūd: *kitāb al-adab, bāb lā yaqūlu al-mamlūk rabbī wa rabbatī; Ṣaḥīḥ Muslim: kitāb al-alfāz min al-adab wa ghayriḥā, bāb ḥukm iṭlāq lafẓat al-'abd wa'l-ama....*

slavery and concubinage is undeniable in the Qur'an itself, an historically intact scripture and Islam's ultimate bedrock.<sup>152</sup>

In a public debate on this issue, one Muslim man repeatedly demanded that I condemn slavery not just today, but across history and in all time periods. I asked him first to answer the Slavery Conundrum: Which of the following was the case: Was the historical record wrong about the Prophet owning slaves? Or is the moral wrongness of slavery something relatively new in human history? Or did the Prophet Muhammad ﷺ commit a grave moral wrong? The man refused to answer that in public, saying he would only discuss this in private.

He was quite wise (if gobsmaekingly hypocritical) to avoid answering. Because, according to the consensus of Muslim scholars across fourteen centuries, stating that the Prophet ﷺ had committed a grave sin (*kabīra*) or unambiguously belittling his moral judgment is considered to be an act of unbelief (*kufr*) that removes one from the fold of Islam.<sup>153</sup> An early twentieth-century Egyptian mufti

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<sup>152</sup> The only way to resolve this would be to challenge the historical record of the Prophet ﷺ's life and, ultimately, to claim that the Qur'an itself had either been altered or did not represent the direct revelation of God. This is what some modern scholars of the Bible have done when concluding that the Old Testament verses describing and calling for the massacre of men, women, children and even suckling infants were shaped by the political ideology of the later kingdom of Israel and were not reflective of God's true teachings; Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (Oxford: Oxford University Press, 2015), 9. Niditch also writes, "[M]any scholars are simply incapable of seeing their God as one who demands and receives humans in exchange for victory."; idem., 41. Another possible but very tendentious argument, raised by the Pakistani Qur'an-only scholar Ghulam Ahmad Parvez (d. 1985), was that the Qur'an's referring to concubines as "those whom your right hands possessed" was in the past tense, meaning that the institution was only valid in the past and was ended by the Qur'an; Ghulam Ahmad Parvez, *Islam: A Challenge to Religion* (Lahore: Tolu-e Islam Trust, 1968), 354-55. See William Gervase Clarence-Smith, *Islam and the Abolition of Slavery* (Oxford: Oxford University Press, 2006), 198.

<sup>153</sup> Qāḍī 'Iyāḍ (d. 1149) states that the *umma* has agreed that the Prophet ﷺ was immune from Satan, that he was infallible (*ma'ṣūm*) in delivering God's revealed message, and that there is consensus that, after the beginning of their prophethood, all prophets are immune ('*iṣma*) from grave sins and repugnant acts (*fawāḥish*); Qāḍī 'Iyāḍ, *Kitāb al-Shifā* (Beirut: Dār Ibn Ḥazm, 2000), 326, 330, 346. Insulting (*sabb*, *shatīma*) or belittling (*istikhfāf*) the Prophet ﷺ is *kufr* by *ijmā'*; Ibn Ḥajar Haytamī, *al-I'lām bi-qawāṭi' al-Islām* (Cairo: al-Maṭba'a al-Wahbiyya, 1292/1876), 67-69; Mullā 'Alī al-Qārī, "Sharḥ alfāz al-kufr," in *Majmū' rasā'il al-'allāmā al-Mullā 'Alī al-Qārī*, ed. Māhir Adīb Ḥabbūsh et al., 8 vols. (Istanbul: Dār al-Lubāb, 2016), 7:121-22; Muḥammad Anwar Shāh Kashmīrī, "Ikfār al-mulḥidīn fī qarūriyyāt al-dīn," in *Majmū'at rasā'il al-Kashmīrī* (Karachi: al-Majlis al-'Ilmī, 2015), 64-65; 'Abdallāh al-Ghumārī, *Afḍal maqūl fī manāqib afḍal rasūl* (Cairo: Maktabat al-Qāhira, 2005), 73-75.

known for his liberal leanings, who was trying to be as accommodating as possible to Westernized intellectuals who rejected many *hadiths*, nonetheless could not avoid the conclusion that anyone who knowingly considers himself above (*mustakhiff*) the notion of the *Sunna* is an unbeliever.<sup>154</sup> The influential late Hanafi scholar Ibn ‘Ābidīn (d. 1836) even affirmed an earlier ruling that, if you say that the actual act of having a concubine is morally repugnant (*qabīḥ*), there is real danger that you have committed *kufr*.<sup>155</sup>

Some Muslims, like the one whose comment is screenshotted above, have tried to argue that the Prophet ﷺ was not morally perfect and that, in fact, our belief that he was is a form of *shirk*, the grave sin of associating partners with God. According to the entirety of the Islamic tradition, however, the Prophet’s moral infallibility and unmatched moral excellence in no way clash with his mortality and humanness. As the famous Shafi scholar of Cairo, al-Zarkashī (d. 1394) wrote, the most beautiful verse of the famous *Burda* poem composed in praise of the Prophet was:

*The most that can be said of him is that he was a man,*

*And that he is the best of all God’s creation.*<sup>156</sup>

There has been much debate among Muslim scholars over whether prophets can commit minor sins (*ṣaghā’ir*), oversights, or factual errors. But none of these apply to the question of slavery, since the belief today is that allowing and practicing slavery cannot just be written off as an error of judgment. It involved being complicit in history’s lengthiest and most brutal crime.

Indeed, attributing the gross, intrinsic moral wrong of slavery to the Prophet ﷺ would be to overturn Islamic theology and moral epistemology entirely. The

<sup>154</sup> Muḥammad Bakhīt al-Muṭīī (d. 1935), “Kitāb Aḥsan al-kalām fī-mā yata’allaqu bi’l-sunna wa’l-bid’a min al-aḥkām,” in *Majmū’at rasā’il al-‘allāma Muḥammad Bakhīt al-Muṭīī* (Cairo: Maktabat al-Qāhira, 1932), 30.

<sup>155</sup> Ibn ‘Ābidīn, *Ḥāshiyat Ibn ‘Ābidīn*, 18 vols. (Beirut: Dār al-Fikr, 2000), 3:48. See also Kecia Ali, *Sexual Ethics and Islam*, 39.

<sup>156</sup> Ibn Ḥajar al-Haytamī, *al-‘Umda fī sharḥ al-Burda*, ed. Bassām Muḥammad Bārūd (Abu Dhabi: Dār al-Faqīh, 1426/2005), 286.

foundation of Islamic doctrine and law rests on the premise that the Prophet's authoritative precedent (*Sunna*), to some degree or another, provided the context, application and explanation of God's message in the Qur'an. The Qur'an is read through the *Sunna* of the Prophet ﷺ. To say that we, as post-Abolition humans, have achieved a moral awakening that makes us more morally aware than all those who preceded the nineteenth century would be to render the moral guidance of the Qur'an and the Prophet ﷺ obsolete.

Recently, one Muslim scholar of slavery in Islamic civilization offered the argument that we are not more morally mature or advanced than the Prophet ﷺ. It is simply a matter of our moral horizons having moved beyond those of people in previous epochs. We live in a time when what we can morally envision is different from what could be morally envisioned during the Prophet's ﷺ time. There are two problems with this argument. First, the isolated voice of Gregory of Nyssa in fourth-century Anatolia shows that it was possible for a man of God to condemn slavery from both a theological and philosophical standpoint in the Late Antique Near East. That moral horizon was certainly visible to him. So then was Gregory of Nyssa more morally aware than the Prophet Muhammad ﷺ? Second, I think this appeal to metaphor is a euphemism. As with the flaw in the Christian notion of progressive liberation, the problem here is not reconciling our moral progress with our religious heritage. Our problem is not justifying that slavery is wrong *now*. It's that our conundrum leaves us with the undeniable fact that God allowed—and His prophets practiced—something that we today say **was as profoundly wrong in those ancient prophetic days as it is now**.

This becomes immediately clear if we imagine the following thought experiment: Suppose that a Muslim today was able to travel back in time to Medina during the time of the Prophet ﷺ and arrived there the day after he had been given Māriya, the Coptic slave girl, as his concubine. What would this Muslim say to the Prophet ﷺ? "What you're doing is a profound moral evil, O Messenger of God"? That is not a conceivable statement for a Muslim to make and remain Muslim.

But that's what a Muslim feels today, isn't it? So what does that mean?

## Conclusion: The Prophet & ISIS

To answer that final question, it is useful to recall the two models for explaining how the abolition of slavery emerged in the early modern period. The Moral Awakening narrative sees slavery as an intrinsic and unnatural wrong. After centuries of not perceiving slavery in this way, humanity awoke to this fact in the Enlightenment. The Economic Explanation, along with its accompanying change in moral perception, holds that human societies did not consider slavery to be a gross, intrinsic moral evil, but rather an undesirable condition that was part of human social and economic reality. Aristotle, Moses, Jesus, and Muhammad were not complicit in a grave moral wrong. Slavery was no more morally evil in their times than disease or poverty. Only when it became economically realistic (and even beneficial) to abolish slavery (and the slavery immediately in question happened to be uniquely brutal), and only when social and economic change had made it possible to envision such moral progress, did slavery's moral evil manifest itself.

Of these two explanations, the Moral Awakening one is simply not convincing. If it seems hard to understand how children today could know a moral fact that eluded Aristotle, Buddha, Moses, Jesus, Muhammad, John Locke, Augustine, etc., it's because that's not a tenable claim. Though average IQs have risen in the last century with improved diet, there is no evidence that mankind's thought leaders post 1800 are any more intelligent than those prior to that. And what is the evidence that people are any more morally mature in the modern period than in earlier times? Not in any abolition of war or genocide, which have achieved undreamt of levels of horror in recent decades.<sup>157</sup> **Indeed, it is the abolition of slavery that stands as the one great proof of human moral progress. And it is precisely that proof that's at issue here.**

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<sup>157</sup> See John Gray, *Straw Dogs: Thoughts on Humans and Other Animals* (London: Granta Books, 2002); Terry Eagleton, *Reason, Faith & Revolution* (New Haven: Yale University Press, 2009), 89-96.

If the Moral Awakening narrative is not true, however, then the heart-wrenching certainty we feel about the absolute moral wrongness of slavery is not reflective of some moral reality that holds true across space and time (Morality with a capital 'M'). Slavery might be a wrong in that it can easily lead to levels of exploitation and brutality that are intrinsically wrong, but the mere fact of a person being 'unfree' or the 'property' of another is not a gross, intrinsic Moral Wrong. There may well be degrees of domination and exploitation that are themselves intrinsically evil, but the types of servitude or dependent labor that do not descend to those levels are not intrinsically Morally Wrong *per se*. None of this means that we should not seek to end less serious forms of exploitation or alleviate suffering that might result from instances of dependent labor. But we cannot condemn as intrinsically morally evil all those various institutions and relationships in humanity's past or present that we have labelled at one time or another as 'slavery.'

As a Muslim, for me the solution to the Islamic Slavery Conundrum is simple: not everything we look back in history on as 'slavery' was intrinsically morally wrong because, when we reflect on what we mean by that judgment, lots of what we see in the past simply doesn't qualify. This is not an original conclusion. It was already posited by Christian natural law philosophers. The mind-knotting, bile-churning difficulty of accepting such a statement in the modern day is the product of a paradox we have created for ourselves. The Slavery Conundrum was always an illusion of our own making: we back ourselves into condemning our past as morally reprehensible because we lump a massive variety of human engagements and relationships under one uniform heading, and then we declare everything under that heading evil. So we condemn the very pasts we still prize and venerate. Clinging to this paradox is inaccurate and unfair both to those generations who came before us and to our relationship with them.

In the case of Islam, *riqq* as defined in the Shariah was not the absolute domination that natural law philosophers saw as inherently immoral. Muslims can choose, and have chosen, to eliminate *riqq* as a legal phenomenon. The Prophet ﷺ would most likely be very pleased with that. But there is no need to condemn it as intrinsically wrong.

The American Slavery Conundrum presents a different challenge, one that is both easier and harder at the same time. It's easier because the Founding Fathers were not infallible prophets. On the other hand, there is little doubt that the plantation slavery of the American South and the Atlantic slave trade qualify as intrinsic moral evils by natural law reasoning. They certainly violate the agreed upon limits of *riqq* in the Shariah. Other Americans will have to ponder how the Founding Fathers so revered in our country could have allowed and participated in that institution, and what that means for their legacy. That's not my problem.

Some people accused me of doublespeak for saying that Islam condemns slavery and that I believe slavery is wrong today, while at the same time refusing to condemn the Prophet's ﷺ having slaves as wrong. That this conclusion ignores the complexity of the word 'wrong' should be clear to anyone who has read this far. 'Slavery' is not 'wrong' in the sense of an intrinsic wrong because 'slavery' is used to mean too many dramatically different things, some of which are intrinsically wrong and some of which aren't. What the Prophet ﷺ did was not such a wrong.

But slavery *is* very wrong in other important and very meaningful ways. As I said at the beginning of this essay, almost no one questions that slavery is wrong today. It's morally wrong in the following ways, some of them applicable only to Muslims and some to all people:

- Most simply, slavery is wrong because it's illegal, since all countries have signed international agreements banning it. Beginning in the 1840s, Muslim states began signing on to various forms of international agreements ending the slave trade and then ending and finally prohibiting slavery within their territories. As I mentioned earlier, this is well within the Shariah rights of a Muslim ruler or state to do. There are certainly unjust laws. But the mere fact of something being illegal *does* convey its own moral weight, since respect for the rule of law is an undeniable moral imperative. This was pointed out by Plato, and it's contained in the Qur'an's command to "Obey God, and obey the messenger, and those in authority amongst you" (Qur'an

4:59) as well as the book's order to the believers to "fulfill your contracts" (Qur'an 5:1).

- Slavery is also morally wrong for Muslims today not in the sense of being an intrinsic, universal moral wrong in all times and places, but in the sense of violating our existing standards of right conduct and propriety. So slavery is not Morally Wrong, i.e., the statement 'slavery is wrong' doesn't reflect an eternal moral reality outside and above human custom (what Dr. Sherman Jackson calls "an independently, ontologically instantiated moral plane"). But slavery is morally wrong because what Muslim communities determine to be suitable or unsuitable, fair or unfair, right or wrong, has real moral and legal weight provided it does not violate the Shariah. As the Companion Ibn Mas'ūd (ra) said, within the boundaries set by God's law, "What the Muslims see as good is good according to God. What Muslims see as bad is bad according to God."<sup>158</sup> This notion of right and wrong can change over time and according to circumstances. It is not eternal.

Perhaps the most crucial point I want to make is that the statement 'slavery is wrong' in no way subscribes to the Moral Awakening narrative. We are not more morally mature or more aware of eternal moral truths than our ancestors. We just have a more refined *'urf* (custom), something that has come about as the result of massive economic, social, and political change. This may seem like a demeaning statement to many: How dare you say that my deeply-felt moral condemnation of slavery is just 'custom'! But this reaction betrays an unusual, distinctly modern tendency to downplay the moral weight of custom and to conflate what we 'feel' to be wrong with intrinsic, absolute Moral Wrong.

Simply put, depth of feeling does not equal a true reflection of a universal moral reality. And custom is far more powerful than determining what type of gifts we give at weddings. Americans presented with a plate of dog meat would probably vomit out of an indissoluble mixture of moral disgust and

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<sup>158</sup> Shams al-Dīn al-Sakhāwī, *al-Maqāṣid al-ḥasana*, ed. Muḥammad 'Uthmān al-Khisht (Beirut: Dār al-Kitāb al-'Arabī, 2004), 374.



sheer revulsion. But in many parts of China dog meat has been “a minor but regular part of the diet” for over two millennia.<sup>159</sup> This is custom, pure and simple. As I write, many Americans react with primal outrage that Roy Moore, a Republican candidate for Senate, had relationships with underage teenagers when he was a grown man. But St. Augustine was engaged to a ten-year old girl when he was over thirty (the marriage was supposed to be two years later).<sup>160</sup> Of course, what Roy Moore did was morally wrong. But it’s morally wrong because it violates our present-day notions of when a person is mature enough to enter into a sexual relationship, what the proper age range is for a couple, and how all this fits into the systems of goods that we value in our society (like education, independence, and career choice). These are all just our customs, just our choices. They are very important to us, but they have not been, and are not, for other societies. They are not unchanging reality itself. They only seem so because, as the Greek poet Pindar (d. circa 438 BCE) wrote, “Custom is king of all.”<sup>161</sup>

- It’s completely normal and laudable for a Muslim to be disgusted by ISIS’s revival of sexual slavery. When the New York Times article “[ISIS Enshrines a Theology of Rape](#)” appeared in 2015, many Muslims were shocked, disgusted, and shaken by ISIS’s enslavement of Yazidi women and girls. How could Muslims do such a thing?<sup>162</sup> How could they justify it in the name of Islam? And, most troubling of all, how could the Prophet ﷺ have done it...and how can we be Muslims when we’re disgusted by what he did?

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<sup>159</sup> “Pet Food,” *Economist*, June 20, 2015.

<sup>160</sup> Grubbs, *Law and Family in Late Antiquity*, 155.

<sup>161</sup> Herodotus, *Histories*, Book III: 38. Montaigne (d. 1592) observed that “we seem to have no other criterion of truth and reason than the type and kind of opinions and customs current in the land where we live”; Montaigne, *Essays*, Book 1:31. Blaise Pascal (d. 1662) wrote that, aside from what God has commanded or condemned, all claims of justice are merely grounded in custom; Blaise Pascal, *Pensées*, trans. A.J. Krailsheimer (London: Penguin Books, 1995, original published 1966), 17.

<sup>162</sup> Rukmini Callimachi, “ISIS enshrines a theology of rape,” *New York Times*, August 13, 2015.

Remember, disgust is almost never natural, meaning our feelings of disgust almost never reflect an unchanging moral or even biological reality (the only exception to this appears to be immediate-family incest).<sup>163</sup> Disgust is culturally conditioned to warn us or drive us away from things our society has determined to be bad or dangerous.<sup>164</sup> So, indeed, disgust does often reflect our profoundest moral values. But they are not necessarily or even regularly universal moral values.

For Muslims, slavery (*riqq*) was not an obligatory practice. It was an economic reality that existed in one form or another in every civilization until the early modern period. And there was nothing bad about Muslims deciding to prohibit slavery and to remove people from that category. This helps us fulfill the aims of the Shariah, which ‘aspires to freedom,’ and it promotes the God-affirmed goods of justice (*‘adl*) and development (*‘umrān*).<sup>165</sup> As Muslim scholars of slavery such as Ingrid Mattson, Bernard Freamon, Rudolph Ware, and Nathaniel Mathews have written, the desire to end slavery and protect people from its pernicious effects have become serious moral concerns for Muslims. So our condemnation of ISIS’s revival of slavery is legally grounded in the commitments that Muslim states and societies have made to ending slavery. More importantly, it’s morally grounded in ISIS’s violation of moral customs that have become global amongst Muslims and non-Muslims alike. Our—and here I mean Muslims’—disgust at ISIS’s revival of slavery is expected. The drive it puts in us to condemn and combat ISIS’s actions is exactly what disgust is supposed to do. But that disgust does not reflect some intrinsic, eternal moral reality. That what ISIS is doing is morally wrong does not mean that what the Prophet ﷺ did was too.

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<sup>163</sup> See Gregory Leavitt, “Tylor vs. Westermarck: Explaining the Incest Taboo,” *Sociology Mind* 3, n. 1 (2013): 46.

<sup>164</sup> See Rachel Herz, *That’s Disgusting: Unraveling the Mysteries of Repulsion* (New York: WW Norton, 2012), 205, 232-33.

<sup>165</sup> See Aḥmad Bey’s 1846 emancipation decree; Aḥmad Ibn Abī Diyāf, *Ithāf ahl al-zamān bi-akhbār mulūk tūnis wa ‘ahd al-amān* (Tunis: al-Dār al-‘Arabiyya li’l-Kitāb, 2001), 4:87-88; Rashīd Riḍā, *Fatāwā al-imām Muḥammad Rashīd Riḍā* (Beirut: Dār al-Kitāb al-Jadīd, 1971), 3:929-30 (from *al-Manār* 13 [1910]: 743-44); Ibn ‘Āshūr, *Maqāṣid al-sharī‘a al-islāmiyya* (Tunis: al-Sharika al-Tūnisiyya, 1978), 130-35.

## Appendix: *Consent and Concubines*

The feature of *riqq* (the institution of slavery as accepted by the Shariah) that clashes most with modern sensibilities is undoubtedly the master's right to have sex with his female slaves. Perhaps even more than with slavery itself, the moral chasm between this and our modern morality seems too vast to bridge. Such denial of a person's autonomy can only be the gravest of wrongs. And yet there it looms, a practice that was unremarkable and morally unproblematic in past ages, from southern Africa to China.<sup>166</sup> The patriarch of the Abrahamic tradition had a concubine, as did the seal of the prophets. (*Concubine*, originally from Latin, is actually defined as a category of sexual partner that is lower in status than a wife but is not necessarily a slave.<sup>167</sup> They often have been slave women, but in the Roman world and imperial China they were often free women. In the Islamic context, we use the term concubine as a translation for *jāriya* or *surriya*, or a female slave in a sexual relationship with her owner.)

As with the issue of slavery overall, it's helpful to remember two things. First, the countless generations of philosophers, theologians, leaders, and normal folk across the globe for whom concubinage was not morally problematic were no less intelligent or morally capable than we are today. We might not agree with their opinions, but we have to take them seriously. And, considering that our view today is a minority one in world history, we should interrogate it as rigorously as we interrogate those of folks in the past.

Second, trying to understand the moral perspectives of people long ago or far away doesn't diminish the reality or importance of our own morality, not just as modern Westerners but also as Muslims. It's totally justified for our Muslim

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<sup>166</sup> Sometimes a group of slaves was seen as so foreign and other that sex with them was considered reprehensible, as in the case of thirteenth-century Angkor and the mountain peoples who were enslaved there. See I. Mabbett, "Some Remarks on the Present State of Knowledge about Slavery in Angkor," in *Slavery, Bondage and Dependency in Southeast Asia*, ed. Anthony Reid and Jennifer Brewster (New York: St. Martin's Press, 1983), 44-45.

<sup>167</sup> See Justinian's *Digest*, 32.49.4.

norms of marriage and sexuality to differ from those of Muslims elsewhere or in the past, provided they don't violate the clear boundaries of the Shariah. From the perspective of Islamic law, in matters such as marriage age, the expected conduct of men and women in a sexual relationship, and even the details of what sort of sex is allowable or harmful all fall within the boundaries of *'urf*, or custom. Within the wide bounds of the Shariah, the moral and legal restrictions and liabilities on such matters are set by what a particular culture deems normative.<sup>168</sup>

Again, the right of a master to have sex with his female slaves in some circumstances was totally normal in societies from the ancient Near East, to the Roman Empire in the early centuries of Christianity, to medieval and even early modern China, to name just a few epochs. Here, however, we'll focus on Islamic civilization and the way that the Shariah tradition conceptualized concubinage (*tasarrī*). As noted earlier, along with marriage, the ownership of a female slave was one of the two relationships in which licit sex could occur according to the Qur'an. In marriage, the consent of the wife to sex was assumed by virtue of the marriage contract itself (it's worth remembering that only in 1970s did U.S. states begin acknowledging that it was possible for a husband to rape his wife).<sup>169</sup> In the case of a concubine, consent was irrelevant because of the master's ownership of the woman in question. As Kecia Ali has noted, books of Islamic law from the formative centuries of Islam offer no evidence for any requirement for consent from slave women.<sup>170</sup>

This did not mean that wives or concubines had no defense against sexual treatment that was abusive, harmful, or excessive. But they found this by

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<sup>168</sup> See, for example, Abū ʿĪsā Sīdī al-Mahdī b. Muḥammad al-Wazzānī (also al-Wāzzānī) (d. 1923-4), *al-Nawāzil al-jadīda al-kubrā fī-mā li-ahl Fās wa ghayrihim min al-badū wa'l-qurā / al-Mi'yār al-jadīd al-jāmi' al-mu'rib 'an fatāwā al-muta'akhkhirīn min 'ulamā' al-maghrib*, ed. ʿUmar ʿImād (Casablanca: Maṭbaʿat al-Faḍāla, 1418/1997), 4:502-4; Jonathan Brown, *Misquoting Muhammad*, 155-57.

<sup>169</sup> See Morgan Lee Woolley, "Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues," *Hastings Women's Law Journal* 18 (2007): 269 ff.

<sup>170</sup> Kecia Ali, "Concubinage and Consent," *International Journal of Middle East Studies* 49, n. 1 (2017): 149; Hina Azam, *Sexual Violation in Islamic Law* (Cambridge: Cambridge University Press, 2015), 186.

complaining to family or to a court about harm (*ḍarar*), not about rape.<sup>171</sup> The Hanbali scholar al-Buhūtī (d. 1641), for example, says that if a master forced a slave woman unable to bear intercourse to have sex, she would be freed as a result.<sup>172</sup>

Perhaps the best way to understand why there is such dissonance between our own sexual morality today and premodern times is to recognize just how unusual the moral and legal prominence that we give consent is in the scope of world history. Not recognizing this risks blinding us to two things: 1) how rare it will be to find a comparable situation in moral systems elsewhere, and 2) how precarious our construct of consent really is.

Consent in our society is an idea we load with immense moral and legal importance. Yet even moderate examination reveals its weakness. Before looking into this, we should recall why we think consent is important to begin with. In one sense, which has become increasingly important in recent decades, consent safeguards the abstract value of each individual's autonomy. This is not the primary importance of consent, however. Autonomy is not everything to us, as the question of suicide reveals. We are not Roman Stoics, for whom suicide was the final act of autonomous choice.<sup>173</sup> Many Western societies (and all but a few US states) still prohibit euthanasia out of fear that people will be pressured or even forced to end their lives and also because choosing to kill oneself is still seen by many as inherently sinful. 'He asked me to kill him,' is not a defense against homicide. Rather, going back to John Locke and John Stuart Mill (d. 1873), consent is important because individuals have the right to choose their own

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<sup>171</sup> See, for example, al-Wazzānī, 3:437-38. Here is an interesting case of harm being dealt with by a judge. A Mālikī scholar named Abū Ṭāhir al-Dhuhlī (d. 979) dealt with the following case in Egypt:

And a woman brought [the complaint] to [the judge] that her husband had a hairy penis and that she could not bear it. So he ruled that she not prevent him [from having sex with her] on the days that he used depilatory syrup (*yatanawwaru*). Then he said to him (i.e., the husband): Use the depilatory syrup every day if you like.

See Muḥammad b. Yūsuf al-Kindī and Ibn Ḥajar, *Kitāb al-Wulāt wa kitāb al-quḍāt wa Raf' al-iṣr 'an quḍāt miṣr*, ed. Rhuvon Guest (Beirut: al-Ābā, 1908 and Leiden: Brill, 1912), 584.

<sup>172</sup> *al-jāriya allatī lā tuṭīqu al-waṭ'*; Maṣṣūr al-Buhūtī, *Kashshāf al-qinā' 'an matn al-Iqnā'*, 6 vols. (Beirut: Ālam al-Kutub, 1983), 4:514.

<sup>173</sup> W.O. Stephens, "Epictetus on Fearing Death: Bugbear and Open Door Policy," *Ancient Philosophy* 34 (2014): 381.

actions and, crucially, decide what is good for themselves. When it comes to sexual relationships, we believe that individuals know what is best for themselves, so their consent is what makes a relationship morally and legally acceptable.

But there is a real problem here. Clearly, there are some people who are not able to make decisions about what's best for themselves. They are called children, and we make decisions for them about what they eat, who they meet, what they believe and what happens to their bodies. It's our parental notion of what's good that defines what's good for our children. This all changes one day, as if by magic, when a child turns 18, and suddenly they have the capacity to consent and decide on their own what is best for themselves.

This is, of course, totally arbitrary. There is nothing about a certain birthday that conveys some deep capacity or understanding. Even if cognitive studies demonstrated that around the age of 18 children's brains achieve some new plateau of capability, this no doubt appears in some children younger than 18 and may never appear in some people far older. Moreover, our parental capacity to judge what is good for our children does not disappear. We can look around and identify relationships or behavior that are destructive or even deadly. Yet once a child reaches 18, there is little we can do to control them.

This results in a conundrum: we give consent (and the capacity to do it) incredible power to stamp acts or relationships as morally and legally passable, yet we attach consent (and its capacity) to an arbitrary moment in someone's life that has no link to their actual capacity to know what is beneficial. What's more, we bestow upon consent the power to make things morally and legally acceptable even though we know that there are people who regularly consent to situations that we agree are incredibly destructive for themselves and others. Yet if we point out this incredible tension, we skate close to the edge of thinkable thought in our society (as I am now, judging by how uncomfortable I feel writing this).

Take the following example: let's suppose that reasonable adults in the US can look at a relationship and see that it is healthy, rewarding, nurturing, and happy. We know what we think makes up such a relationship, and we have a good sense

what its external signs are. We applaud it. Now imagine that suddenly we learn that the woman is really a fifteen-year old girl and the man is thirty. Now this is not only illegal, it has become morally repulsive. And yet all that's changed is the ages. By contrast, if there are two fifty-year olds engaged in a sexual relationship that is emotionally, spiritually and even physically devastating to both of them, that's morally tolerable (and legal) in our society. We look away and don't judge. They are, after all, consenting adults.

**So the factors that we all know are morally meaningful—the nature of a relationship, the impact it has on those involved—actually mean nothing for our socio-moral approval. The factor that is in and of itself meaningless—age—means everything.** One might object: No, we know that, in general, people are unable to make mature decisions about their sexuality until a certain age, say 18. Fine, but we make the same determination on the issues of driving a car and drinking alcohol. Though we acknowledge (in the US) that it's illegal to drive under 16 and drink under 21, we attach almost no moral opprobrium to the adults who buy beer or give car keys to the underage. Even though driving when you don't know how to drive or drinking when you're too young to do so responsibly regularly cause massive social harm.

Like an alchemical spell, consent transmutes sex from immoral and illegal into something legal and morally passable. Yet this capacity to do 'consent' just appears in a person, one day, on a certain birthday. Its absence prior to that makes someone a sex offender. Its presence a day later makes sex unobjectionable. We imagine that consent works because people can decide what's best for themselves. But it's obvious that many people have no idea what's right or wrong for themselves, whether they're fifteen or fifty. Joseph Fischel puts it eloquently:

*...consent is flimsy. It cannot do all the work of sexual adjudication assigned for it by law or by the social. Sex that is regretted, unpleasant, or even harmful occurs in legally consensual relations. And some of the sex that occurs in legally nonconsensual relations, between minors or between*

*adults and minors, in formative, transformative, good, great, OK, or non-momentous.*<sup>174</sup>

So consent is both absolutely all-important in our late modern sexual morality and also mercurial, even a fiction we conjure to fill the gap previously played by custom, family guidance and family approval. What's even more ironic is that in [every US state couples](#) can marry under 18 (usually as young as 16) with their parents' or a judge's consent. [Twenty-seven](#) states have no minimum age in such situations. These facts are controversial, as much recent reporting on child marriages in the US demonstrates (see [here](#), [here](#), [here](#) and [here](#)). But they remain facts nonetheless.

Allowing the marriage of minors in the US with parental consent introduces a real question: where exactly is the dividing line between the autonomy of the individual—their idea of what he or she thinks is best—and the influence and priorities of those whom that individual loves and values? Imagine this situation: I, as an American parent, assent to my (non-existent) fifteen-year-old daughter getting married to her twenty-five-year-old boyfriend. In this case, a minor, who can't consent according to our moral and legal conventions, is able to marry because her guardian believes she is making a decision that is good for her. But what if I, as a parent who has been making decisions on what is best for my daughter for fifteen years, suggest to her that marrying a certain man is good for her. **And she agrees.** That would be legally acceptable in our society too.

This becomes even more complicated when we move outside what we imagine to be Western liberal society, either in space or backwards in time, before mass urbanization and the fracturing of societies into disintegrating nuclear families. Let's continue with the case of the father and his hypothetical daughter, except now the father is not American but a farmer in rural Yemen. He decides to marry his fifteen-year-old daughter to his neighbor's son because they are part of the same clan, whose integrity is essential for all their lives and feelings of community. His daughter does not know the boy very well, but she so honors her

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<sup>174</sup> Joseph J. Fischel, *Sex and Harm in the Age of Consent* (Minneapolis: University of Minnesota Press, 2016), 10.



father and so trusts him to do what is best for their entire family, her included, that she agrees to the marriage. Is that an instance of consent? How it is different from the previous hypotheticals?

We imagine consent as reflecting the choice of an autonomous individual, a free mind in a free and unencumbered body, in a liberal, secular democracy. As Lila Abu-Lughod writes in the case of young brides in rural Yemen, this “fantasy of autonomy” just does not function in the same way in a society in which family solidarity, clan interests and parental wishes mean a tremendous amount to individuals.<sup>175</sup> What does it mean to ‘consent’ to a marriage if what your family wants you to do means more to you than what you yourself desire, not because you’re oppressed but because you truly trust and value them? Even the leading advocate of the struggle against modern slavery acknowledges the challenges of combatting ‘unfree marriage,’ which a 1956 convention added to the list of slavery-like practices that states should commit themselves to ending. Kevin Bales admits that identifying exactly what an ‘unfree marriage’ is proves quite difficult because it hinges on an incredibly fluid and ambiguous concept, namely consent, and on outsiders determining “the location of consent within cultural boundaries.”<sup>176</sup> In nineteenth-century China, for example, it was common for women to be sold by their families to wealthier families as wives, concubines or sexually vulnerable servants. But the girls and women involved often consented in order to alleviate their own or their families’ poverty.<sup>177</sup>

What does any of this have to do with slavery and concubinage in Islam? In one sense, nothing. None of it succeeds in reconciling our late modern sexual morality with its premodern counterparts. But what realizing the peculiarity of our intense emphasis on consent does reveal is that a good portion of that moral chasm separating us from societies with concubinage is the result of our own

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<sup>175</sup> Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge, MA: Harvard University Press, 2013), 217-19; idem, [“Authorizing Moral Crusades to Save Muslim Women,”](#) (Farhat Ziadeh Annual Lecture, University of Washington 2012), 20-21.

<sup>176</sup> Bales, *Understanding Global Slavery*, 48.

<sup>177</sup> Johanna Ransmeier, “Ambiguities in the Sale of Women at the End of the Qing Dynasty,” in *Sex, Power and Slavery*, ed. Gwyn Campbell and Elizabeth Elbourne (Athens, OH: Ohio University Press, 2014), 319-44.

idiosyncrasies. Critics of our society could point to any number of absurdities created by our supercharged notion of consent. And even if we try to think of consent in a more modest and broadly applicable way, it's hard to pin down what consent is in societies less individualistic than our own. So we are an outlier, and not always on the basis of good reasoning.

Consent was important in the Shariah's conception of sexual relationships. It just wasn't as important as it is in our society's morality. It did not come from an assumed, universal autonomy. Children didn't have autonomy; their parents made decisions about their best interests. And part of the 'legal handicap' that defined *riqq* was, though not a denial of autonomy (non-Muslim slaves could not be forcibly converted to Islam, for example, or denied their religious rights), a greatly diminished autonomy. Consent was crucial if you belonged to a class of individuals whose consent mattered: women and men who were adults (even male slaves could not be married off against their will according to the majority opinion of jurists).<sup>178</sup> Consent did not matter for minors. And it did not matter for female slaves, who could be married off by their master or whose master could have a sexual relationship with them if he wanted (provided the woman was not married or under a contract to buy her own freedom). It's also important to remember that becoming a concubine was not necessarily a bad development for a female slave. If she gave birth to a child or even just became pregnant, not only was her child freed but she was too, upon her master's death. Her master could not sell her, and her child had the same legal standing as a child born in a free marriage.

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<sup>178</sup> "Nikāḥ," in *al-Mawsū'a al-fiqhiyya*, 41:264, 267.